

Las Siete Partidas



VOLUME ONE

THE MEDIEVAL CHURCH

THE WORLD OF

CLERICS AND LAYMEN

TRANSLATED BY Samuel Parsons Scott

EDITED BY Robert I. Burns, S.J.

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LAS SIETE PARTIDAS

Volume 1:
The Medieval Church

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Edited by Robert I. Burns, S.J.

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The Worlds of Women and Merchants

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The Dead, the Criminal, and the Marginalized

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The World of Clerics and Laymen

Translated by Samuel Parsons Scott

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PENN

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GENERAL INTRODUCTION

THE PARTIDAS: INTRODUCTION

Robert I. Burns, S.J.

PROLOGUE: THE KING'S STRANGE CODE

Alfonso X el Sabio or the Learned (1221–84), king of Castile, is a key founder of Spanish culture by his astonishing patronage of letters, law, music, art, and science, by his relentless imposition of Castilian rather than Latin in all state business, and by his production (through teams of experts—Muslims, Christians, and Jews) of seminal works such as his histories, his astronomical tables, and his law codes. His life was filled with furious activity, including an amphibious crusade against Moroccan Salé on the Atlantic, his long struggle to become Holy Roman Emperor, and his frontier wars with Muslim powers. His septicentennial in 1984 occasioned widespread congresses and celebrations, not least in the United States, including an Alfonsine exhibit at the Library of Congress. Alfonso is continues to be much in the academic eye.¹

A Code for New Worlds

The Roman law renaissance transforming Europe in the twelfth and thirteenth centuries found little echo in Castile until Alfonso published his series of legal works. The most ambitious of these was the *Siete Partidas* or *Seven Divisions* of Romanized law. Knowing that his custom-law feudal kingdom would resist the professional, sophisticated, and academic nature of the *Partidas*, but also realizing that the modern world then bursting upon Castile would make such a law inevitable, Alfonso drew up his code as a vast program in essay form.² Like Justinian and Napoleon, he marshaled legal experts, fashioning an intricate architecture of Roman legal concepts, systematic and unified.

In the fairly dense print of its only English translation, it fills two volumes and more than 1,500 pages. Each of the seven “parts” divides into various “titles” and these in turn into “laws.” But this is no law book like modern or even contemporary medieval codes: each title and law is an essay incorporating folk wisdom, touching myriad aspects of ordinary society, a social and political encyclopedia in effect, a mirror of medieval daily life. One reads them with delight—though perusing the

1. Fourteen authors discuss Alfonso's many-sided contribution and career in *Emperor of Culture: Alfonso X the Learned of Castile and His Thirteenth-Century Renaissance*, ed. Robert I. Burns, S.J. (Philadelphia: University of Pennsylvania Press, 1990). For a different multiauthor approach see *The Worlds of Alfonso the Learned and James the Conqueror: Intellect and Force in the Middle Ages*, ed. Burns (Princeton, N.J.: Princeton University Press, 1985). For biographies see especially Joseph F. O'Callaghan, *The Learned King: The Reign of Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993); his *Alfonso X and the Cantigas de Santa Maria: A Poetic Biography* (Leiden: E.J. Brill, 1998); and Manuel González Jiménez, *Alfonso X, 1252–1284* (Palencia: Diputación Provincial, 1993). For Alfonso as patron see also Evelyn Procter, *Alfonso X of Castile: Patron of Literature and Learning* (Oxford: Clarendon Press, 1951); and John E. Keller, *Alfonso X, el Sabio* (New York: Twayne, 1967). The most recent of these books will serve also to introduce the wider and ever growing Alfonsine bibliography.

2. For the debate on Alfonso's intentions see O'Callaghan below. Besides the bibliography below on the *Siete Partidas* by Jerry R. Craddock, see his comprehensive and annotated *The Legislative Works of Alfonso X, el Sabio: A Critical Bibliography*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986), covering all manuscripts, editions, translations, and studies. Updates are being prepared. See also his “Legislative Works of Alfonso el Sabio” in *Emperor of Culture*, chap. 12.

section on how to act and dress and talk like a knight, or on naval warfare or labor unions, is more entertaining than working through the drier sections on juridical procedures or last wills. Its inclusiveness, however, makes this also a reference work on every kind of medieval arcanum. A compendious and systematic architectonic whole, it is recognized today as a literary as well as a legal masterpiece and is widely studied by literary and linguistic scholars. Since it was a law code, it aimed less at originality than at effective transfer of the Roman juristic tradition. And since it meant to be of general application, it did not overstress the local.

The philosopher-king could not have known that his code would become law down into modern times, not only in Spain but in the Hispanic empire in Asia, Africa, and the New World. It is still the Blackstone of Latin America; and it has had "the widest territorial force ever enjoyed by any law book." Even in the United States, "civilized law began" with Alfonso's code "in a considerable group of jurisdictions" and it is still cited from Florida, Louisiana, and Louisiana Purchase states to California and the Mexican War acquisitions.³ It figured here in 1984 in the *Summa Corporation* case in California, affecting federal, state, and private ownership of more than five hundred miles of coastal wetlands, a case that went to both the California and the federal supreme courts.⁴ The *Partidas* is also currently the basis "in large part" for a similar challenge "to public ownership of a large and valuable area" of public land in Texas.⁵ It is this supplementary function that caused the American Bar Association to prepare the present English translation in 1931. Another acknowledgment of United States indebtedness is the high-relief bust of Alfonso, commissioned by the U.S. House of Representatives to grace the gallery door of its chambers as one of the twenty renowned lawgivers of world history.

Texts and Translation

The 1931 translation by Samuel Parsons Scott is the only such rendering in English; considering the size and complexity of the project, it is likely to hold the field alone into the indefinite future. It is a sound translation, with the occasional flaws inevitable in the genre. Its legal terms were vetted by the U.S. Department of Commerce, while its proofing fell to the staff of the Library of Congress. No critical edition of the Castilian is in the offing. It would have to be a massive collaborative enterprise, over decades. Jerry Craddock of the University of California at Berkeley and Antonio García y García of the Pontifical University of Salamanca have identified all manuscripts known to them; and Robert MacDonald of the University of Richmond plans to transcribe a single selected manuscript one day, but even this project is many years away. We do have an established text—that is, an official text that has served as the acceptable legal instrument. Even if a critical text existed, consequently, it would have more literary and historical than legal and practical use. With the invention of printing, the first edition, by Alonso Díaz de Montalvo in 1491, seemed flawed even to contemporaries. The Cortes or parliament asked the king in 1551 to order a better text; this resulted in the classic publication of 1555 by Gregorio López ("the Spanish Accursius"), declared by law the official version for all Hispanic lands, including Latin America and the Philippines. Criticism over the centuries led to the 1807 edition by the

3. Charles Sumner Lobingier, Introduction to *Las Siete Partidas*, trans. Samuel Parsons Scott (Chicago: Commerce Clearing House, 1931), liii. See below, "The *Partidas* on the U.S. Frontier."

4. See below, "The *Partidas* in California Law."

5. See below, "The *Partidas* in Texas Law."

Real Academia de la Historia, the only competing text published to date. Though made equal in authority to López by a decree of 1818, it was perceived as inferior (despite bibliographical and other extraneous advances). Consequently Spain's Supreme Court ordered in 1860 that, whenever the two diverged, the courts must follow López.⁶ That is the text our English translation follows: López in the 1843–1844 edition. This is the text most useful for lawyers, of course, if not for academics; medievalists will continue to hope for a nuanced critical edition.

The front matter to the 1931 translation is now seriously out of date and had to be superseded. Its introduction by Charles Sumner Lobingier, judge of the Court of First Instance in the U.S.-occupied Philippines, is amateurish, and the bibliography by John Vance, law librarian at the Library of Congress then, is no longer relevant. The notes to the text by the translator are an embarrassment, but mercifully they are few. The new front matter here includes an extensive treatment of Alfonso and his relationship to the *Partidas* by the most knowledgeable anglophone scholar of that king and his reign, Joseph F. O'Callaghan of Fordham University. The modern bibliographer par excellence of Alfonso's legislative works, Jerry R. Craddock, has added to his 1986 magisterial survey of those works and their allied literature a special bibliography here on the *Partidas*.

A New Presentation

The 1931 translation is uncommonly hard to come by. When students can manage to find a rare copy, it is usually in the law library. American lawyers generally seem not to have seen or heard of it, though obviously some number of lawyers must have recourse to it for their cases involving residual Spanish law in the United States. Hispanists are well aware of the work, but most medievalists have never encountered it and are delighted when introduced to it. Today's ever-expanding profession of lawyers, and the many new law libraries that have sprouted during the nearly seventy years since the original translation, will naturally appreciate the availability of this reissue. Hispanists, despite their facility with Old Castilian, will welcome its convenience for personal and class use. Medievalists of all stripes will acquire from it new insights and wider horizons. It is particularly suitable for undergraduate classes and graduate seminars in history, a window for them on a vast and vanished colorful world. And few educated readers will be able to resist exploring its treasures.

The five volumes in which the full work is republished are separately subtitled:

1. *The Medieval Church: The World of Clerics and Laymen* (Partida I)
2. *Medieval Government: The World of Kings and Warriors* (Partida II)
3. *The Medieval World of Law: Lawyers and Their Work* (Partida III)
4. *Family, Commerce, and the Sea: The Worlds of Women and Merchants* (Partidas IV and V)
5. *Underworlds: The Dead, the Criminal, and the Marginalized* (Partidas VI and VII)

Each volume has its own thematic and bibliographical introduction, with some analysis of the content of the respective *partida*.

6. O'Callaghan disentangles and contextualizes these and the other relevant Alfonsine texts below, in "Alfonso X and the *Partidas*."

THE THIRTEENTH CENTURY: A WORLD OF LAW AND LAWYERS

The thirteenth century occupies a paradoxical stage in the evolution of Western culture. It produced some of the West's most illustrious names, including Aquinas, Assisi, Dante, Giotto, and Marco Polo, as well as renowned kings like Emperor Frederick II Hohenstaufen and Louis IX of France. The century saw the culmination of many great movements—in commerce, urban development, technology, global exploration, scholastic philosophy, vernacular literatures, medicine, and Gothic art. As James Brundage has noted, “the thirteenth century was an age of spectacular innovation in nearly every department of Western life.”⁷ At the same time, the century displayed disquieting pathologies, some of them ominous for Europe's future, such as intensified antisemitism, the new Inquisition in Albigenian southern France, and a politicized papacy. This play of shadow and light over a scene of kaleidoscopic dynamism lends the age a special fascination, a sense of summing past triumphs while ushering in less genial modern worlds. Many have called it carelessly “The Greatest of Centuries.” One of its masterworks, still active today in the practicalities of daily life, is the *Siete Partidas* of Alfonso the Learned, incorporating a veritable encyclopedia of medieval information and mentalities.

“Revolutions”: 1000–1500

To appreciate the code we must first situate it in its time. A helpful schema by which to begin may be borrowed from the famous American architect Ralph Adams Cram, who believed he had found a key to historical processes in cycles of five hundred years. Thus the two thousand years of Western civilization would fall into a Roman era to about the year 500, an early medieval to 1000, a high medieval to 1500, and a modern period these past five hundred years. Each of his four periods began and closed with a transitional century that shared some of the previous period's characteristics (making two transitional centuries back-to-back each time). Each cycle would have near its midpoint, however, a startlingly different representative figure. (One might suggest Constantine, Charlemagne, Dante, and finally George Washington or Voltaire.) Cram's philosophy of history has a fatal flaw: history and life move so fast that any grouping of centuries or other time-spans can be arranged as similar cycles of decisive change. It does, however, offer a useful mnemonic for relating the thirteenth century to a wider chronology.

The Western world had indeed begun to take on surprising new shapes and directions around the year 1000. And that “transitional” eleventh century yielded to the multiphase “Renaissance of the Twelfth Century,” the thirteenth then falling heir to that progress and supplying its definitive expression, only itself to give way to the post-Black Death period of transition in the fifteenth-century Italian Renaissance. Within those five centuries indeed, and by their midpoint at 1250, Europe had moved from a ruralized, culturally impoverished hinterland that served as appendix to the cosmos of Byzantium and the cosmos of Islam, to being a major power now in the political sphere, a major player in planetary commerce, a producer and consumer of high culture, an intimidating challenger to a recessive Byzantium and Islam, and a colonialist and missionizing presence in the world. Many historians see this apparently sudden surge as a sociocultural “revolution,” indeed as a series or set of revolutions. Others caution that revolutions imply evolution, seeing the previous root beneath the

7. Brundage, *Medieval Canon Law* (New York: Longman, 1995), 165.

flower and the acorn before the oak. At any rate, thirteenth-century Europe was caught up in a dynamic of powerful movements and their institutions, so that sober scholars do not hesitate to speak of a medieval Industrial Revolution, the urbanization of Europe, and a shift from oral culture to a written and from a Latinate to a shared vernacular expression. And of course this was an age of universities, of Gothic, of the last great crusades, and of the roads now open to Cathay.

The Juridical Revolution

Prominent among the many transformations, and related to most of them, was the legal revolution of the period 1050–1350, described in the title of Harold J. Berman's history of the movement as *Law and Revolution: The Formation of the Western Legal Tradition*, with its roots in the accompanying "Papal Revolution and Canon Law."⁸ Some scholars see this phenomenon as the inevitable consequence of a Western world grown suddenly so complex in commerce, power relationships, and new institutions as to demand a sophisticated jurisprudence. Conversely, others view it as a natural development in a world rationalizing, systematizing, and codifying everything in sight.⁹ Still others emphasize the simple search for justice in a suddenly chaotic world, and in the practical need to resolve conflicts and to allocate rights and duties.¹⁰ Doubtless the movement was the product of both society's practical necessities and new intellectual habits of mind. Since Europe saw itself as a continuation of ancient Rome, especially of the Christian phase of the empire, and had preserved in Christendom's previously primitive stages some echo of Roman law, it used as its instrument of revival Justinian's *Corpus iuris civilis*, especially the principles, interpretations, and methods perceived in the fifty books of its *Digest*.¹¹ As a model of living Roman law, however, with universal or international authority and practicing courts all over Europe, the concomitantly developing canon law of the church became a major conduit of the revival. This interaction of the two "learned laws" in the thirteenth century is discussed below in connection with the first *partida*.

Europe found its first intellectual excitement in coopting this thousand-year heritage of philosophical jurisprudence and adjudicative procedure. Rulers in state and church used it to professionalize, rationalize, and centralize. Scholasticism borrowed from its methodology and pursued philosophical topics anticipated by the jurists, such as the Just War. The city, the university, the guild, and countless groupings formed themselves around its evolving concept of corporation. Diplomacy took

8. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983). Part 1, over 250 pages, takes up that "Revolution" and "Canon Law." See also Stephan Kuttner, "The Revival of Jurisprudence," in *Renaissance and Renewal in the Twelfth Century*, ed. Robert L. Benson, Giles Constable, and Carol D. Lanham (Cambridge, Mass.: Harvard University Press, 1982), 299–323. For a survey with wider horizons into early modern times, see Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, 2nd ed., trans. Lydia G. Cochrane (Washington, D.C.: Catholic University of America Press, 1995). A recent compendious overview is Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999).

9. Thus Alan Watson's *The Making of the Civil Law* (Cambridge, Mass.: Harvard University Press, 1981) sees the rise of medieval Roman law as owing simply to a long legal tradition, mindcast, and educational system, an intellectual process "distinct from other developments in the society" and "largely autonomous." See also his *The Evolution of Law* (Baltimore: Johns Hopkins University Press, 1985), especially 93, 119.

10. R. W. Southern, *The Making of the Middle Ages* (New Haven, Conn.: Yale University Press, 1961), 150–51.

11. See the translation supervised by Alan Watson, *The Digest of Justinian*, 2 vols., and its four-volume companion edition with the English translation in facing pages with Theodor Mommsen's 1878 Latin text (Philadelphia: University of Pennsylvania Press, 1998; Latin-English, 1985). Cf. H. F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, 3rd ed. (Cambridge: Cambridge University Press, 1972). See also *Corpus iuris civilis*, ed. Theodor Mommsen et al., 3 vols. (Berlin: Weidmann, 1915–28).

up its idea of plenipotentiary; the Inquisition embodied its prosecutory system and borrowed its torture and fire. Law promoted a cold rationalism and linear logic; its dominant role in the emerging society at this time seems to have introduced a certain imbalance in the Western society, which the more evenly developed Byzantine and Islamic spheres escaped.

Law was not only intrinsically fascinating in both the intellectual and practical orders, it fast became the road to wealth and power. City administration, royal chanceries, treaties, diplomacy, real estate transactions, shipping, business contracts, propaganda, last testaments and much more all required a lawyer or the paralegal then called a notary. Churchmen found law a swifter path to bishoprics than theology; "in the later Middle Ages most bishops; including those of Rome, were lawyers rather than theologians."¹² The "century of the lawyer-popes" produced such noted legal figures as Innocent III and Innocent IV. At the end of the thirteenth century Roger Bacon lamented that for forty years law had been replacing all other learning, an "abuse" that "not only destroys the study of wisdom but the church of God and all kingdoms," so that philosophers and theologians go unemployed and cannot even afford books. All the good minds rush to Roman law, he says, because "jurists are made rich and honored by all prelates and princes."¹³ At the University of Bologna lawyers claimed the rank of honorary duke; Castile's *Siete Partidas* says "they have the rank of knight, and after twenty years of teaching they are to receive the honor of count." The salaries in 1254 at the University of Salamanca gave professors of philosophy, rhetoric, or medicine one hundred maravedís each, but gave the civil and canon law professors five hundred each. Walter Ullmann describes the result: "At no other time has the law played such a pivotal role in society as in the Middle Ages," when "it became the most crucial and vital element of the whole social fabric," as well as "the soul of the body politic."¹⁴

Resistance and Progress

The movement did not go unchallenged but met widespread resistance. Dante complained that "the Gospel and great doctors are deserted" for the study of law. Pope Gregory IX in the thirteenth century deplored litigation as a plague so universal as to "extinguish the law binding men together" and to "exile harmony beyond the frontiers of the world"; to restore harmony, the lawyer-pope issued more laws, his *Decretales* code. The celebrated legist Pierre Dubois (b. 1250) viewed civil and ecclesiastical litigation as the major target in any reform of Christendom, "the greatest common evil." Ordinary people disliked Romanist arcane procedure, expense, puzzling citations, unintelligible Latin, and professional lawyers. The populace in Spain's kingdom of Valencia, for example, protested "the great expense and infinite injury on account of the malice and lies of the lawyers," and for a brief time forced their abolition. A thirteenth-century compendium of wisdom notes that "so many hire lawyers to defend their property, but the lawyers consume it." It also sees lawyers "as worse than prostitutes, since prostitutes sell the lower and worse part of their body but lawyers the

12. William J. Bouwsma, "Lawyers and Early Modern Culture," *American Historical Review* 78 (1973): 309. The role of jurists, magistrates, and men connected with the law in the intellectual and cultural life even of modern times is surveyed there; one conclusion is that "the culture of Renaissance humanism, especially in its earlier stages, was largely the creation of lawyers and notaries" (308).

13. Bacon, *Compendium studii*, in his *Opera quaedam hactenus inedita*, ed. J. S. Brewer, 2 vols. (London: Rerum Britannicarum Medii Aevi Scriptores, 1859), 418.

14. Ullmann, *Law and Politics in the Middle Ages: An Introduction to the Sources of Medieval Political Ideas* (Ithaca, N.Y.: Cornell University Press, 1975), 28.

nobler and better, namely the mouth and tongue." It gives the reason "why lawyers more often die without sense than other men": "while alive they sold it." "And just as frogs flee in jumps, so [lawyers] keep after cases, jumping the truth." Indeed, the "tongue of a lawyer is like the tongue of a balance, which tips to the other side at the least weight, say a penny." A proverb in thirteenth-century Germany dismissed them all: "Die Juristen sind böse Christen." The noted jurist of Bologna, Parenti, abandoned his profession and became a Franciscan friar after hearing the chant of local swineherds: "Hurry back to the sty, pigs, as lawyers hurry into hell." These sentiments anticipate the later cry of the English rebel Jack Cade: "Let's kill all the lawyers." Paradoxically, the status of lawyers only continued to rise.¹⁵

Meanwhile, as Berman notes, this "total upheaval" created "in every country of the West" a system of "professional courts, a body of legislation, a legal literature, [and] a 'science of law.'" ¹⁶ A long line of legal scholars evolved, from the textual exegetes, glossators, commentators, and treatise organizers into the organic *summa* stage that culminated in mid-thirteenth century. That last stage included the *Summa aurea* or "golden" system of Hostiensis in 1271, the nearly 100,000 glosses of the *Glossa ordinaria* of Accursius in 1227, the canon law *Decretales* organized in 1234 by Ramon de Penyafort, and in its own way the massive *Siete Partidas* of Alfonso X the Learned. The lawyers also began arranging a Romanization of every kind of local or special positive law, resulting in notable codes or texts such as the *Liber augustalis* or *Constitutions of Melfi* by the Holy Roman Emperor Frederick II (1231), the *Établissements* of Louis IX of France, the *Assizes* of the crusader kingdom of Jerusalem, the *Sachsenspiegel* for Saxony (by 1225) and *Schwabenspiegel* for Swabia (1275), the work of King Magnus the Lawmender in Norway (1275), the early forms of the *Consulate of the Sea* maritime law in that century, the local *Coutumier* production in France such as Normandy's (by 1220), the *Grand Coutumier* (1258) and Beaumanoir's *Coutumes de Beauvaisis* (1283), and in England the great treatise by Bracton (1250). This "Marriage of the Laws" also affected cities, feudal custom, and regional laws.¹⁷

The New Law in Spain

The countries of the Spanish peninsula in the thirteenth century shared enthusiastically in the juridical excitement. This was truer for eastern or Mediterranean Spain, where the Catalan peoples and their Crown of Aragon federation shared directly with Italy and Occitania or southern France in the full early vigor of the revival.

15. On these responses to the *furor legalis*, see Robert I. Burns, S.J., "Canon Law and the Reconquista: Convergence and Symbiosis in the Kingdom of Valencia Under Jaume the Conqueror," *Proceedings of the Fifth International Congress of Medieval Canon Law* (Città del Vaticano: Biblioteca Apostolica Vaticana, 1980), 387–88, 395, 409. See also Burns, *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*, 2 vols. (Cambridge, Mass.: Harvard University Press, 1967), 1: chap. 14.

16. Berman, *Law and Revolution*, 50.

17. See the excellent translation and introduction by James M. Powell, *The Liber augustalis or Constitutions of Melfi, Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231* (Syracuse, N.Y.: Syracuse University Press, 1971). A similar introduction by F. R. P. Akehurst, to his *The Coutumes de Beauvaisis of Philippe de Beaumanoir* (Philadelphia: University of Pennsylvania Press, 1992), covers the French customary collections. See also his *The Etablissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans, and Paris* (Philadelphia: University of Pennsylvania Press, 1996). The later codification of the Catalan maritime laws is translated and discussed in its various medieval stages by Stanley S. Jados, *Consulate of the Sea and Related Documents* (University: University of Alabama Press, 1975). An able introduction to custom law and its "dramatic transformation" between 1150 and 1280 is John Gilissen, *La coutume* in the series *Typologie des Sources du Moyen Âge Occidental* (Turnhout: Brepols, 1982). Cf. the citations by O'Callaghan of the *Liber augustalis* and the works of Bracton and Beaumanoir in his chapter below, notes 2, 3, 4. Armin Wolf has an overview, "El movimiento de legislación y de codificación en Europa en tiempos de Alfonso el Sabio," in *Alfonso X el Sabio, vida, obra y época*, ed. Manuel González Jiménez et al. (Madrid: Sociedad Española de Estudios Medievales, 1989), 31–37.

King James the Conqueror, who ruled the dynastic federation for most of the thirteenth century, explained how he carried “legists and decretalists in my [traveling] household,” because every king should keep with him “decretalists and legists and custom-lawyers, since lawsuits come in all those kinds [of law]” and James “had to take them along to help me when needed.”¹⁸ For his newly conquered kingdom of Valencia, James oversaw compilation of the *Furs*, the first Roman law code of general social application in Europe, making both a Latin and a Catalan version.¹⁹ He commissioned the jurist Vidal de Canyelles to compile in Latin (later translated into Navarro-Aragonese) the huge *Fueros* of Aragon known as the *Vidal Mayor*.²⁰ Among his Romanist elaborations of feudal law, King James had the jurist Pere Albert do the *De consuetudinibus Cathalonie*, in Catalan the *Commemoracions*.²¹ At the grassroots level the ubiquitous notaries drafted many thousands of Romanist transactions from wills to ships’ manifestos.

The realms of James’s neighbor and in-law, Alfonso X the Learned, had only recently combined for the last time the ancient kingdoms of Castile and León, and had expanded vastly by conquering nearly all the Islamic heartlands today called Andalusia, with its great Mediterranean and Atlantic maritime ports. A specialist on Alfonso, Joseph O’Callaghan, explores the king’s career and legal achievements below. Here it may be helpful to recall that Alfonso fitted his juridical contributions into a very active life as innovative administrator for his suddenly combined realms, crusader and a promoter of Castile’s naval power, combatant against dangerous rebellion, and candidate for Holy Roman Emperor. Though any king easily took on the role of cultural patron, lover of schools and learning, cultivator of art and architecture, and open-handed patriarch to his people, Alfonso outshone all contemporary rulers and most others of any period. His multicultural realms provided the Jewish and Muslim scholars for his scientific work, including many translations from the Arabic and a decade’s astronomical observations honored thereafter in Europe into the Renaissance. He undertook the encouragement of a “new history,” an innovative re-orienting toward a protonational historiography covering all classes and including sociocultural matters. A prolific troubadour poet himself, he invented a multidisciplinary art more comprehensive than our later opera form, his *Cantigas de Santa Maria*: a corpus of 427 poems, each in its own musical setting, incorporating folkloric miracle tales, each unrolling like a modern comic strip in some 1,300 crowded miniature paintings about every aspect of contemporary life, all designed for presentation with dance accompaniment on great feast days in the new cathedral of conquered Seville. Less ambitious works included his important treatise on chess and table games, a marvelous mechanical clock, the first vernacular book to introduce the “scientific” and medical traditions about gems to Europe, and fiction translated from the Arabic

18. *Llibre dels feits*, in *Les quatre grans cròniques*, ed. Ferran Soldevila (Barcelona: Editorial Selecta, 1971); and in the philological edition *Llibre dels feits*, ed. Jordi Bruguera, 2 vols. (Barcelona: Editorial Barcino, 1991), cap. 396. On Roman law in medieval Spain see also J. M. Font Rius, “La recepción del derecho romano en la península ibérica durante la edad media,” *Recueil de mémoires et travaux publiés pour la Société d’histoire du droit* (Université de Montpellier) 6 (1967): 85–104.

19. The thirteenth-century Latin *Furs* are edited by Manuel Dualde Serrano as *Fori antiqui Valentiae* (Madrid: Consejo Superior de Investigaciones Científicas, 1950–67). For the Catalan version see the ongoing multivolume edition by Germà Colon and Arcadi García, *Furs de València* (Barcelona: Editorial Barcino, 1974–).

20. For the surviving manuscript, in Romance, see *Vidal mayor, traducción aragonesa de la obra In excelsis dei thesauris*, ed. Gunnar Tilander, 3 vols. (Lund: Håkan Ohlssons Boktryckeri, 1956). A facsimile edition is *Vidal Mayor*, in 2 vols., with accompanying studies by Antonio Ubieto Arteta et al. (Huesca: Instituto de Estudios Altoaragoneses, 1989).

21. For the transformation of Catalan feudal law see the introduction by Donald J. Kagay to his translation of *The Usatges of Barcelona: The Fundamental Law of Catalonia* (Philadelphia: University of Pennsylvania Press, 1994). Kagay has in press a translation of Pere Albert’s *Commemoracions* (Tempe: Center for Medieval and Renaissance Studies, Arizona State University).

such as the Dantesque *Muhammad's Ladder* and the light eastern tales called *Calila e Digna*. Among other benefits from Alfonso's intense and personal patronage was a massive transfusion of Arabic learning into Europe.

The most influential legal code of Alfonso was the *Siete Partidas*, composed as some 3,000 separate essays or reflective disquisitions, arranged around 176 main headings, all the themes woven into an organic system. Unlike other codes, it is as much a work of literature as law, a catechism of philosophical-moral rumination and behavioral report, exhortative and genial.²² As a monument of wisdom literature it seems as admirable a construction of human genius as any Gothic cathedral.

ALFONSO AND THE WILD WEST: THE *PARTIDAS* ON THE U.S. FRONTIER

It is not surprising that the *Partidas* enjoyed a considerable role in Spain's extensive empire, including Latin America and the Philippines down to our own day, not excluding the Philippines under American colonialist management until 1946. Less well known is the role of the *Partidas* and its allied codes within the United States. In some states they were and are a vigorous presence, in others rather an historical memory, and in a few a surviving echo in one or other field of law. The jurist Charles Lobingier notes, for example, that "Spanish law remained in force in Texas until 1840," and that "the *Partidas* are frequently cited in the early Supreme Court reports of that state."²³ Though subsequent codes, such as the *Nueva recopilación* of 1567 and the *Novísima recopilación* of 1805, had governed the Spanish colonies, the old codes such as the *Partidas* were not abrogated; all had to be examined by the courts, and on any number of points the *Partidas* would be decisive.

A caution is needed here. The *Partidas* did not work its magic in the New World as the direct and primary law of the land but rather as a living component of the developing Spanish codes, surviving as a main root, as foundation and principles, and as supplementary law. The influence of Hispanic law on Latin America or United States law is a broader concept therefore than the influence of the *Partidas* alone, whether direct or indirect. It is not possible to discuss the history of Spanish law or of the *Partidas* in the New World without being aware of the intertwined nature of one with the other. Still, historians have never hesitated to single out the *Partidas* as a living code, a component of later contexts, the most radical and irrepressible element in the florescent later codes, with serious and frequent impact in United States law. The present essay then does not propose to trace the intricate manner by which the *Partidas* variously worked through or influenced New World Spanish law, much less how New World cultures, constitutional evolutions, and jurisprudence affected the Alfonsine contribution. That task would require another book, another perspective, and another lifetime. Our more modest and sufficient purpose here is to survey representative ways in which the Alfonsine code or its elements persisted in regions of the United States, issuing from the wider Spanish law historical context. In that focus the influence of Alfonso's *Partidas* is clearly discernible and justifies the dictum of Charles Lobingier, cited above, that it has had "the widest territorial force ever enjoyed by any law books."

The Louisiana Purchase in 1803 doubled the size of the United States. Among its

22. See also the comments in O'Callaghan's chapter below, especially, notes 59, 60.

23. Lobingier, Introduction, liv–lv. On Latin American connections see John Thomas Vance, *The Background of Hispanic-American Law: Legal Sources and Juridical Literature of Spain*, 2nd ed. (New York: Central Book Co., 1943), especially 86–108 on the *Partidas*; cf. Craddock, *Legislative Works*, nos. C335, C399, C410, C673.

areas at least theoretically under Spanish law for a time were the future states of Louisiana, Arkansas, Iowa, North and South Dakota, Nebraska, Oklahoma, and "the greater part" of Colorado, Kansas, Wyoming, Montana, and Minnesota. The end of the Mexican War in 1848 brought in the future states of Arizona, California, New Mexico, Texas, Nevada, and Utah, with parts of Oklahoma, Kansas, and Colorado. Spanish law was "formally in force" in American Florida, though from 1819 it became "not wholly disregarded." Incoming settlers diluted or displaced Spanish law in many places by their English common law. Spanish law, for example, had "no enduring influence" in Alabama and Mississippi. In places the Spanish influence surfaced in elements of family law, water or land rights, will probate, civil procedure, or crime. The peculiar system of marital community property continued particularly in Arizona, California, Nevada, New Mexico, and Texas. In some states an underlying French stratum reinforced the Spanish. A hybrid legal system evolved especially in Louisiana and Puerto Rico.²⁴

No comprehensive history of the influence of the *Siete Partidas* and other codes and components of Spanish law in the United States is available or envisioned. The obvious source materials, the relatively few articles, and an intimidating forest of case reports must serve, along with a brief but knowledgeable survey appended to Eelco Nicolaas van Kleffens's *Hispanic Law Until the End of the Middle Ages*. Four geographical areas may be selected, however, to illustrate more extensively as examples the nature and career of these hybrid legal systems: Texas, Louisiana (specifically the New Orleans regions), California, and in resource law the Southwest. Spain had acquired Louisiana from France in 1761, substituting Spanish law including the *Partidas*. After an ephemeral recovery by France under the *Code Napoléon* in 1800, the Territory of Orleans along with the rest of the Louisiana Purchase passed to the United States in 1803. Under the American flag, the Spanish system in the future state of Louisiana was to remain in place except where it might conflict with the United States Constitution or be amended. "A mixed or composite legal system then evolved," van Kleffens notes, with criminal law especially reflecting the incoming Anglo tradition, while in property, persons, and obligations "Spanish and French legal ideas have kept the upper hand."²⁵

To resolve the ensuing confusion in Louisiana, an official *Digest of the Civil Code Now in Force* was commissioned in French in 1806–1808 to apply the Spanish system. The *Digest* was then translated into English and sent to the courts, where Spanish, French, and English translators facilitated daily procedure. As a supplement in 1818 a translation of part of Alfonso's fifth *partida* was brought out as a small book, with English and Spanish on facing pages. This proved so acceptable that the legislature commissioned the two translators to put into English all those parts of the *Partidas* in force locally; the result was a two-volume work in 1820 with a generous index.²⁶ In

24. Eelco Nicolaas van Kleffens, "Note on the Continued Validity After the Fifteenth Century of Medieval Hispanic Legislation," in his *Hispanic Law Until the End of the Middle Ages, with a Note on the Continued Validity After the Fifteenth Century of Medieval Hispanic Legislation in Spain, the Americas, Asia, and Africa* (Chicago: Aldine, 1968), 255–82.

25. *Ibid.*, 276.

26. Louis Moreau Lislet and Henry Carleton, *A Translation of the Titles on Promises and Obligations, Sale and Purchase, and Exchange, from the Spanish of "Las Siete Partidas"* (New Orleans: Roche Bros., 1818); and *The Laws of "Las Siete Partidas" Which Are Still in Force in the State of Louisiana*, 2 vols. (New Orleans: J. McKarher, 1820). And see C. Russell Reynolds, "Spanish Law Influence in Louisiana," *Hispania* (U.S.) 56 (1973): 1076–82; Julio Barthe Porcel, "Las Siete Partidas y el vigente código civil del estado norteamericano de Luisiana," *Anales de la Universidad de Murcia* 21 (1962–63): 187–97; Henry P. Dart, "Influence of the Ancient Laws of Spain on the Jurisprudence of Louisiana," *American Bar Association Journal* 18 (1932): 125–29. Cf. Craddock, *Legislative Works*, nos. C200, C353, C488–89, C571. See also James M. McCaffery, "Las Siete Partidas en la jurisprudencia del estado norteamericano de Luisiana," *Revista de derecho privado* 73 (1989): 938–44; and "Curia philippica, piedra angular de la ley española en Luisiana," 78 (1994): 433–38. And see

1825 the Louisiana government drew up a *Civil Code*, using the *Partidas*, the 1808 *Digest*, and French and Anglo elements; again this was done in French, then translated into English. By the time the *Civil Code* was revised in English in 1870, common law elements had gained ground, though the Louisiana courts and the United States Supreme Court were still taking into consideration the *Siete Partidas*. The *Partidas* indeed “have often been referred to in cases decided by Louisiana courts” and by the nation’s Supreme Court in cases originating in Louisiana.²⁷

Marilyn Stone has reported on the debate between legal scholars as to whether the present Louisiana code owes more to the Spanish or to the French legal systems. As part of this “tournament of scholars,” she notes, Rodolfo Batiza of Tulane University concluded in 1971 that Spanish sources account for only 8 percent of the 1808 *Digest*, and that the fourth *partida* on loans/sales and the fifth on marriage property were particularly influential on the 1825 *Civil Code*. Robert Pascal argues conversely that the *Digest* “was intended to, and does for the most part, reflect the substance of the Spanish law in force” and not the French. A project of the law school of Loyola University in New Orleans found Spanish law cited in judicial decisions from 1809 to 1828 four times more than French law, with the *Siete Partidas* high on this frequency list; the 1820 translation of the *Partidas* increased its citation rate by 100 percent. Stone also calls attention to the 1981 congress in Madrid on the mutual influence of Louisiana and Spanish law, as well as the interest at Loyola University Law School in more formal programs for joint Louisiana-Spain legal and cultural scholarship. Stone herself is particularly interested in the quality of the translations commissioned by the early legislature, a neglected aspect of juridical history.²⁸

The *Partidas* in Texas Law

In the 1990s the state of Texas became embroiled in a major dispute involving the *Partidas*, which sent lawyers scurrying to renew acquaintance with King Alfonso and his sources. The description here is from correspondence with the author initiated by the General Counsel of the Texas General Land Office. Founded in 1837, the General Land Office manages for the state over twenty million acres of public land, claimed at the independence of the Texas Republic in 1836. Though Texas adopted English common law in 1840, it retained and still follows Spanish law for property held by private parties under Spanish, Mexican, or Texas Republic grants. “Private parties” challenged the state over “public ownership of a large and valuable area of coastal public land,” by a claim “based in large part on the interpretation of ancient legal texts including *Las Siete Partidas*, attributed to King Alphonso X of Castile,” especially laws derived from the *Partidas* on seashores and wetlands. Under Spanish doctrine, “seashore” would belong to the crown, so that pre-1840 coastal private holdings in Texas would be bounded on the seaward side at the line reached by the water “during ordinary storms.” Along the Texas coast the bounds set by Spanish law and those set by English common law “could vary by as much as 7 miles.” Exactly where private

van Kleffens, *Hispanic Law*, 192, 273. On an unpublished conference paper by Anthony J. Cárdenas in 1988, revised as “La tierra, el derecho y Colón,” an “overview of the presence of Spanish legislation” in the United States, “with special reference to the *Partidas*,” see Jerry Craddock’s chapter below, “*Partidas*: Bibliographical Notes.”

27. Van Kleffens, *Hispanic Law*, 273–74.

28. Marilyn Stone, “Roots of the Spain-Louisiana Connection: The Impact of Translations on the Heritage of Louisiana,” *Proceedings of the Thirty-First Annual Conference of the American Translators Association*, ed. A. Leslie Willson (Medford, N.J.: Learned Information Inc., 1990), 253–58, with further bibliography on Louisiana’s legal evolution.

upland meets "sovereign waters and submerged land" had become an urgent question by early 1995, and the services of Alfonso X were urgently needed.²⁹

Anglo settlers in Mexican Texas had comfortably accommodated themselves to the prevailing Hispanic legal system. As an American state young Texas had introduced English common law for criminal cases in 1836, while its fourth congress in 1840 made that law the general rule of decision. Joseph W. McKnight has analyzed in a series of articles the hybrid survivals that emerged from that early experience. His *Spanish Elements in Modern Texas Law* clarifies the seashore complication we have just reviewed and proposes three categories in which Texas law retains Hispanic principles or flavor. The categories are procedure, water and land ownership, and family law. Among the "striking Spanish overtones" in procedural law is the "single court system," where "all issues were considered simultaneously," as against the dichotomy of court-of-law/court-of-equity. In this respect "Texas was the earliest of all English-speaking countries to adopt a permanent and full unitary system of judicial administration," a structure the anglophone legal world has subsequently followed.

A procedural continuity, found in King Alfonso's *Partidas* and in Hispanic law generally, mandated that a case be tried in the place nearest to and most convenient for the defendant, rather than where the case originated. Though overlaid now with exceptions, this "basic rule of Texas law" in a lawsuit is "still that enunciated in the Castilian code of the thirteenth century." Procedural too was the "simple pleading" by both parties in a "straightforward and modern" way rather than in the Anglo usage of "special language" for "each different kind of complaint." This tradition disappeared after the Civil War era and is "only now gradually [re]emerging." A final procedural peculiarity has been "the institution of the independent executor" in probate law, which Texas evolved from a Hispanic base. "This provides for enormous flexibility in the administration of estates." Arizona and Washington borrowed this idea from Texas, and Idaho from Washington; eventually this "Texan transmission of her Spanish heritage" became part of the Uniform Probate Code in many other states.³⁰

Under land and water survivals, McKnight notes that "about one-seventh of Texas which is in private hands stems from grants of the Spanish and Mexican sovereigns." By international law, private land titles there remained in force after Texan independence, while public land went to the new government. Thus a Hispanic and an Anglo system confronted each other. Seashore land held by a chain of Hispanic titles now starts on dry land "in accordance with mean highest high tide," whereas land held by post-1840 title starts from the line of "mean high tide," with the state holding the part along the sea. "In recent years a considerable amount of litigation has developed on these grounds following the discovery of oil and gas along the Gulf coast." Similarly, land grants along a navigable stream went by Spanish law "up to the edge of the stream," the sovereign or state owning the entire bed; common law titles after 1840 were given as far as a line "down the middle of the stream." A 1929 adjustment giving the bed to both classes of owners ran into some Hispanic law complications. Among water disputes involving Hispanic law, "the building of the great Falcon Dam on the

29. Martha McCable, General Counsel, Texas General Land Office, Austin, Texas, letter to the author on 16 May 1995 (all quotes).

30. Joseph W. McKnight, professor of law and Larry and Jane Harlan Faculty Fellow, Southern Methodist University, *Spanish Elements in Modern Texas Law* (booklet) (Dallas: n.p., 1979), 3–5, including quotations; his "The Spanish Influence on the Texas Law of Civil Procedure," *Texas Law Review* 38 (1959): 246–54; his "Law Without Lawyers on the Hispano-Mexican Frontier," *West Texas Historical Association Year Book* 66 (1990): 51–65; and his allied "Justicia sin abogados en la frontera hispano-mexicana del norte," *Anuario mexicano de historia del derecho* 10 (1998): 597–610. See also his more general "The Survival of Spanish Law in North America," *The Brief* (Southern Methodist University School of Law) (Fall 1992): 2–7.

Rio Grande in the late 1950s" affected downstream landowners who lost the flow; the courts concluded that "Texas as successor to the rights of Spain" had no obligation to those landowners.³¹

The last of McKnight's three categories is family law, "the most striking residue" of the Hispanic system in the state. Adoption was a normal Spanish process, discussed at length in Alfonso's *Partidas* but alien and unknown to English common law. The influx of common law eliminated it in 1840, but in 1850 it was "generally reinstated," so that Texas "was the first Anglo-American state to institute adoption generally and permanently" (except for a Mississippi enactment of 1846). Texas also kept the "forced heirship" by which a testator could not wholly disinherit descendants, including adoptees, though a history of adjustments in 1856, 1931, 1967, and 1973 limited its force. Another family law continuity was the acceptance of invalid but good-faith marriages as valid for many legal consequences.³² The "most significant Hispanic institution" carried over in Texas was the concept of community property, elevating the wife's status beyond anything conceived in common law. It will appear again below under California law, where its effects changed the national scene.³³

McKnight takes up an important family legacy of Hispanic law that transformed society in early America, Homestead Law. His treatment is especially seminal and intriguing because he deals not only with Alfonso's *Partidas*, but with the many subsequent evolutions in Hispanic and United States law on the topic, as a process of growth. His separate study "Mexican Roots of the Homestead Law" catches this meaning. The seed in the *Partidas* had been protection of categories both of persons and of possessions from seizure by one's creditors. One such Alfonsine law forbade debt recovery by taking a man's oxen, cows, domestic animals, plows, implements, agricultural tools, or slave workers. Two other *Partidas* laws protected from seizure a knight's horse, arms, pay, fief, cloak, shield, or house, if any other chattel or property were available. Spanish law eventually extended the categories of protected goods as well as the persons protected until nearly everyone was covered. Anglo-Texans who settled Texas under Mexico had included so many with debts left behind in the United States that the United States Congress pushed through a treaty with Mexico for debt enforcement; this protected settlers for a set time "in the Hispanic debtor-extension tradition." These preliminaries led to the innovative homestead act of 1839 and the more general act of 1845, an institution that "spread rapidly to Mississippi, Georgia, Florida," and soon to a number of other states; before the century's end it prevailed "in almost every part of the United States." By an irony of history, the evolved elaboration of Hispanic homestead tradition then entered the Mexican constitution of 1917.³⁴

Though Texas served as seedbed in such developments, conversely it also received Hispanic legal influence circuitously from its eastern neighbor Louisiana, notably through the official two-volume English translation of Alfonso's *Partidas* commissioned by the Louisiana legislature, "used extensively" in Texas, and in such items as

31. McKnight, *Spanish Elements*, 5–6. For more on this topic, see his "The Spanish Watercourses of Texas," in *Essays in Legal History in Honor of Felix Frankfurter* (New York: Bobbs-Merrill, 1966), 373–86.

32. McKnight, *Spanish elements*, 6. The *Partidas* has a long segment on adoption in IV. xvi. 1–10; cf. III. xviii. 91–92.

33. See also McKnight, "Spanish Law for the Protection of Surviving Spouses in North America," *Anuario de historia del derecho español* 57 (1987): 365–95.

34. McKnight, "Mexican Roots of the Homestead Law," in *Estudios jurídicos en homenaje al maestro Guillermo Floris Margadant* (Mexico City: Universidad Nacional Autónoma, 1988), 291–304, quotes 295–97, 304. The *Siete Partidas* provisions are in its III. xvii. 3, along with II. xxi. 23 and V. xiii. 4. See also McKnight, "Protection of the Family Home from Seizure by Creditors: The Sources and Evolution of a Legal Principle," *Southwestern Historical Quarterly* 369 (1982): 370–99.

the 1836 venue statute in Texas, derived "directly from the language of the Louisiana translation of the *Partidas*."³⁵

The *Partidas* in California Law

Spanish law prevailed from 1769 in the region now constituting the state of California. That law survived Mexico's independence from Spain in 1810, her acquisition of the California regions from Spain in 1822, and the American conquest in 1848. American California's constitutional convention in 1849 after lively debate adopted that standing law, except where it might conflict with the national Constitution or would be changed by statutory modification. A popular election then ratified this ancient law overwhelmingly. From 1850 to 1879 the Spanish system was interpreted and amended by common law judges and lawyers but with little real change. The anomaly by which one system was understood in the terminology and principles of an alien system continued; but the common law now became more explicitly the rule of decision in California courts. As late as 1887, in a classic bibliographical survey, a Los Angeles lawyer urged his California colleagues to study Spain's "prior laws" as having affected "the legislation of our own times"; he particularly lauded that "wise code," the *Siete Partidas* of Alfonso X the Wise.³⁶

Spanish law notably affected property titles and marital community holdings in American California down to the present day, and each in turn can serve to illustrate the historical continuity. At the treaty ending the Mexican War in 1848 the United States undertook to protect current property titles and rights, encompassing in California then some ten million acres of the best land. An act of 1851 established procedures for validation according to "the laws, usages, and customs" of Mexico. As titles changed hands through the generations, these holdings then continued to resurface. Need rarely arose to cite the *Partidas* specifically or any of the companion codes, but as in Louisiana they constituted the most active elements of this "Mexican" law. Decisions of the United States Supreme Court sometimes weave poignant stories from such title cases. Francisco Solano, for example, an "aboriginal" and the "principal chief of the unconverted Indians" in northern California's Sonoma jurisdiction as well as formerly a captain in the Mexican army, successfully vindicated his Spanish property rights by heredity and possession.³⁷

More dramatic and bizarre was the 1980s Ballona tidelands case, which developed into a national cause célèbre. Title to those wetlands, originally part of a Rancho La Ballona but now in the elegant Marina del Rey neighborhood of Los Angeles, had come into the hands of the celebrity eccentric Howard Hughes and through his estate into the Summa Corporation, which projected a billion-dollar development there. Though the Mexican title was clear and validated according to the 1851 act, the city of Los Angeles and the state of California sued the corporation, alleging an implicit easement "for commerce, navigation, fishing, passage of fresh water to canals, and water recreation." City and state wished to exercise these sweeping invasive rights by

35. McKnight, "Law Books on the Hispanic Frontier," *Journal of the West* 27 (1988): 74-84, quotes 79.

36. I must thank Maria Elena (Ruelas) Kennedy for her knowledgeable forays into the Los Angeles County Law Library on my behalf, and her enthusiastic photocopying of California case laws. Only a few of the materials can be incorporated into this brief treatment, but even those omitted have supplied invaluable background. David T. Langum has a monograph on the failure of California to develop a true hybrid system like Louisiana's, as demographic and psychological factors overwhelmed the old order, in *Law and Community on the Mexican California Frontier* (Norman: University of Oklahoma Press, 1987). The California lawyer's quote above is from Peter L. Reich's "Mission Revival Jurisprudence: State Courts and Hispanic Water Law Since 1850," *Washington Law Review* 69 (1994): 881-82.

37. U.S. Supreme Court, 10 March 1855. S.C. 17 How., 525-41.

state sovereignty instead of by eminent domain with compensation, asserting a "public trust" inherent. If successful, this land grab would affect 512 miles of California's 670 miles of coastline. If unsuccessful, the suit would hobble the series of public trust invasions which the California Supreme Court had made a threatening tool to intimidate property owners.

Ecologists entered the fray; the Audubon Society and the Sierra Club associated themselves in the case, as did the California Land Title Association. More significantly the Reagan presidential administration brought the federal government into the fray, as *amicus curiae* against California. In 1982 the California Supreme Court rejected all the corporation's arguments. The United States Supreme Court, however, in an opinion delivered by Justice William Rehnquist in 1984, reversed that decision and vindicated the Spanish law position. The *Supreme Court Reporter* took note of "the expert testimony at the trial" about "*Las Siete Partidas*, the law in effect at the time of the Mexican grant." And the *Los Angeles Times* in a front-page story noted the argument by state and city "that Mexican property law followed the old code called *Las Siete Partidas*, under which the sea, seashore, rivers, and harbors were held to 'belong to all persons.'"³⁸

Another area of California's Spanish law that preserved its basic status over the generations and has attracted much scholarly attention is marital community property. The philosophical difference between Spanish and Anglo-American law on this matter appears succinctly in a report to the new California legislature in 1850. Spanish law "regards husband and wife, connected it is true by the nuptial tie yet disunited in person," as having "dissevered interests in property." From that vantage, their union is seen "in the light of a partnership, no more intimate or confiding than an ordinary partnership in mercantile or commercial business." In contrast, English common law considers the spousal bond "as so close in connection" that the two "become one in person, and for most purposes one in estate," with control of the family's property in the husband's hands as "in truth and reality the head of the household," conceding to the wife only dowry rights and the husbandly payment of her debts.³⁹

Spanish law emancipated the wife, allowing her a separate property as well as an equal share in the community property over which the husband exercised dominion; expressions of this position are in both Visigothic and Alfonsine law, including the *Siete Partidas*. California's constitutional convention, as historian Peter Conmy reports, debated and approved this marital law as "more just, more specific, and especially so with respect to the rights of women," rejecting English common law on the matter. Historian Rockwell Hunt in 1901 recorded that "this is believed to be the first time such power was granted to women by a state constitution." Legislation during the next quarter century further strengthened women's rights in that direction, while the novel context of more frequent divorces, women's suffrage, and working wives extended and liberalized its application.⁴⁰

38. *Summa Corporation v. California ex rel. State Lands Commission and City of Los Angeles*, 466 U.S. 198, 80 L.Ed. 2d 237; argued 29 February 1984, decided 17 April 1984, rehearing denied 4 June 1984. *Supreme Court Reporter* (1984), 1753-58. *Los Angeles Times*, Monday, 9 January 1984, front page.

39. Quoted at length in Peter Thomas Conmy, *The Historic Spanish Origin of California's Community Property Law and Its Development and Adaptation to Meet the Needs of an American State* (booklet) (San Francisco: Native Sons of the Golden West, 1957), 9. See also the classic by William Quinby de Funiak and Michael J. Vaughn, *Principles of Community Property*, 2nd ed. (Tucson: University of Arizona Press, 1971), chap. 3 on "Spanish Laws and Their Historical Background," no. 29 on the *Partidas*, and especially chap. 4 on "Establishment of Community Property System in the United States," covering New France, the Louisiana Purchase territory, the Floridas, Texas, the Oregon Country, New Mexico, Arizona, California, and Nevada. A representative and useful item is Walter Loewy, "The Spanish Community of Acquests and Gains and Its Adoption and Modification by the State of California," *California Law Review* 1 (1912): 32-45.

40. Conmy, *Spanish Origin*, 7, 8, and note 29 (quotes).

The most bizarre development of this Spanish inheritance followed the 1913 constitutional amendment allowing a federal income tax. California amended its community property law to define the wife as having vested interest in her equal share, so that she could declare liability for a half for tax purposes. Other states attempted this same evasion—Oklahoma in 1939 and 1945 and Oregon, Michigan, Nebraska, and Pennsylvania in 1945–47. The Supreme Court of the United States addressed this taxpayers' revolt by declaring Pennsylvania's move to community property laws, unlike California's Spanish-based situation, to be unconstitutional. The consequent indignation of a national electorate, aroused over this seeming favoritism, forced Congress to revise the Internal Revenue Code in 1948 to embrace California's privilege for all other states and territories. In Conmy's words, "the community property principle received a national application in the limited field of income taxation."⁴¹

The *Partidas* in Southwest Mining and Water Law

The western states have variously enjoyed the forward-looking elements of the *Partidas* and its allied Hispanic codes and variously betrayed them. Peter L. Reich is pioneering this story as it has affected natural resources law. His "Western Courts and the Privatization of Hispanic Mineral Rights" traces the removal of community sharing or governmental fair licensing of gold and silver mining into the hands of greedy exploiters with consequent large-scale damage to the environment. Hispanic law did not include mines and mining rights in a given land grant unless expressly so stated. The surrender treaty of Guadalupe Hidalgo in 1848 enshrined that Hispanic situation for the United States Southwest, to the encouragement of prospectors, small mines, and governmental oversight. In California, Reich notes, the state Supreme Court's "initial receptiveness to the Spanish and Mexican tradition" of ownership persisted until the bitterly fought case of *Biddle Boggs v. the Merced Mining Company*, involving the ambitions of the celebrated "Pathfinder" John C. Frémont. In a series of fluctuating decisions at that time, between 1858 and 1861, the California Supreme Court reversed the Hispanic tradition, "knowingly violated the Guadalupe Hidalgo treaty," and in a burst of judicial activism (perhaps influenced by bribery) turned over the state's subsurface resources to large-scale exploiters, limiting access by small miners. Reich argues that the *Partidas* and related codes were available at the time in public and private law libraries and were reasonably familiar to California's legal fraternity. The system prevailing in California from 1861 on, however, privatized essential public resources, foiled rational development of them, and encouraged big-business and hydraulic mining that deforested, polluted, contaminated with mercury, flushed away hillsides, and otherwise inflicted environmental damage.⁴²

California's ill-conceived repudiation of Alfonso and the Hispanic mineral doctrine eventually contaminated its neighbor states, though much later. New Mexico Territory, from which Arizona Territory detached itself in 1864–1912, retained the Mexican-style public ownership of minerals from the 1840s until 1903. As late as 1888 and 1903, major decisions reasserted that Hispanic foundation. Only in 1903 did the New Mexico Supreme Court begin the swing away from the tradition of common sharing toward California-style privatization with its monopolistic consequences. In

41. *Ibid.*, 24; De Funiak and Vaughn, *Community Property*, chap. 4, section 53.1.

42. Peter L. Reich, "Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title," *Columbia Journal of Environmental Law* 23 (1998): 57–87, especially 60 (receptive, knowingly violated), 73 (library availability), 76 (*Partidas*), 71–78 (California privatization sequence), and 86 (environment).

neighboring Arizona, however, Governor John Goodwin in 1864 lauded Hispanic mining law, which avoided monopolies and gave “full scope to the enterprise and energy of our people.” The territorial legislature followed this tradition in its first mining statute. Only in 1925 did the Arizona Supreme Court follow California into privatization doctrine and practice. Texas went the same route after its 1866 constitution reversed its Hispanic doctrine. As late as 1986, however, Texas cited Alfonso’s *Partidas* to reserve coal and lignite as state-owned! Despite its drift away from Alfonsine mineral law generally, Texas “in rare instances has resurrected it in support of the public interest.” Ironically too, Mexico itself in the late nineteenth century abandoned its own traditional public policy to favor greedy privatization with the inevitable degradation of the environment. The course of privatization elaborated in Reich’s careful study holds important lessons for environmental protections and may point the way for some recovery of our Alfonsine heritage.⁴³

In the arid southwestern states, water was a resource more valuable than the miner’s gold and minerals. An impressive bibliography has accumulated over the past century around this tangled topic and its controversies. In a prizewinning study on “Mission Revival Jurisprudence: State Courts and Hispanic Water Law Since 1850,” Reich critiques that historiography and brings to it a revisionist archival perspective. Hispanic water law with its Alfonsine foundations, protected by the Guadalupe Hidalgo treaty, saw water as a common resource, allocated or regulated in time of shortage by the authorities. A town thus had to share its water with other users in its region. American California’s jurisprudence substituted instead an absolute right and monopoly on the part of Hispanic-origin towns. California arrived at this position not via Anglo-American common law but through a fictional and gratuitous pseudo-Hispanic invention, a cultural-legal artifact reminiscent of the “Mission revival” architecture encumbering the state. Reich explores minutely this “judicial hijacking,” hitherto given a benign interpretation by legal scholars. The activist California and New Mexico courts, and the Texas courts from 1926 to 1962, “deliberately distorted historic communal water sharing in favor of municipal exclusivity and riparian innovation [in agriculture],” repeatedly transforming a common resource into a property right. Reich summarizes the faux-Hispanic doctrine: “an American successor municipality to a Spanish or Mexican pueblo has an absolute and exclusive right to all the surface and groundwater of a stream flowing through the original pueblo, including its peak floodflow and all its tributaries, from its source to its mouth,” that is “superior to all other riparian and appropriative rights” as long as the city needs the water and despite its unending growth.⁴⁴

Reich’s chronology of this legal revolution is instructive as well as relevant to today’s water policy. In 1879 California’s Supreme Court did reject the claim of Los Angeles to all the water in the Los Angeles River within the city’s district; both sides cited Hispanic law. In 1881 the court took a contrary opinion but avoided deciding the doctrine itself. In 1886 and again in 1892 the court boldly employed monopoly language. In a “definitive ruling” in 1895, “for the first time the state’s highest court had

43. *Ibid.*, 78–85 (New Mexico, Arizona, Texas), 82 (Goodwin), 85 (coal; Texas quote), 87 n. (Mexico).

44. Reich, “Water Law,” 905 (summary quote), 923 (hijacking), 925 (Texas quote). This study won the Ray Allen Billington Award of the Western History Association in 1995. In the *Partidas* see III.xxviii.28–32 and III.xxxii.13–18 (rivers “belong to all persons in common” and riverbanks have public usage). See also Jesús Lalinde Abadía, “La consideración jurídica de las aguas en el derecho medieval hispánico,” *Anales de la Facultad de Derecho de la Universidad de la Laguna* 6 (1968–69): 49–93; cf. Craddock *Legislative Works*, no. C388. For Hispanic medieval background see the seventeen studies by Thomas F. Glick, *Irrigation and Hydraulic Technology: Medieval Spain and Its Legacy* (Brookfield, Vt.: Ashgate, 1996). Study 16 in this set reproduces his booklet *The Old World Background of the Irrigation System of San Antonio, Texas* (El Paso: Texas Western Press, 1972).

held that Los Angeles had an absolute and exclusive right, ostensibly based on Hispanic law" but essentially based on an invented "historical myth." An 1899 case then "clarified and extended" the position. As the myth spread among lawyers and boosters, it survived further challenge. A twenty-year legal battle did secure a brief reversal, with the Hispanic model of sharing applied; but in 1975 the state Supreme Court unanimously retreated to the now traditional practice of municipal monopoly. From 1943, moreover, the monopolist doctrine "was an established rule," applicable to other Hispanic-origin towns. San Diego indeed had followed the arguments of Los Angeles, eventually winning its own monopoly from the state Supreme Court in 1930.

New Mexico followed the California model but unevenly. Its Supreme Court refused monopoly status to Santa Fe in 1938, but only on the grounds that "deserters" had irregularly founded it. In 1958 the Court formally allowed that status to Las Vegas, New Mexico, though a new stage of complications was to begin as late as 1994. Texas never abandoned the original doctrine of sharing. In a 1984 case before the Texas Court of Appeals, for example, Laredo lost its bid for monopolist status.⁴⁵

The legal evolution of municipal water law in the Southwest is mirrored in the irrigation component for agriculture. Hispanic law did not award adjoining water along with a land purchase or grant, but required in each case "an express or implied conveyance from the sovereign." Reich also traces the development away from Hispanic doctrine on that front, with its implications for large landowners and agribusiness.⁴⁶ The more fascinating legal story, however, is how California and in a general way New Mexico invented a pseudo-Alfonsine municipal water doctrine, a Disney-like fantasy, while Texas held to the original Hispanic position. Though citation of the Alfonsine original in all this owed as much to an overlay of later supplementary codes, Alfonso and his *Partidas* remained a representative icon.

In a dense article on streams or watercourses in the Hispanic legal substratum of Texas law (including adjoined deposits of sand, gravel, and minerals), Joseph McKnight points up two structural frameworks essential to understanding the role of the Hispanic components.⁴⁷ "Whereas the *Partidas* and the commentators speak in terms of sovereign right and control" over streams and irrigation, he notes, Spain itself had instead frequently accepted local usage. Ironically, therefore, Hispanic law in the New World displayed "a stronger reliance on the doctrine of the *Partidas* than in Spain itself," so that "water rights adhered here for the most part along the lines of Roman law as transmitted through the *Partidas*." That development made streambeds, flowing waters, and disposition of irrigation rights decisively "a part of the royal patrimony." Indeed "the words of the *Partidas* were more literally understood" in the new context "and constituted the basic text for defining the Hispanic system."

McKnight's second observation posits a generation gap in the manner and scale of applying the Hispanic heritage in Texas watercourse law. After English common law had become the rule of decision there in 1840, application of Spanish principles became "greatly curtailed." More disastrously for King Alfonso's contributions, "the thread of Hispanic learning" among lawyers and judges in Texas seems to have attenuated "in the period following the Civil War" as a new generation replaced the old, so that "there was little recourse to the law of Spain and Mexico in water law matters until relatively recently." "Well into the present century" only the general impression survived that "water rights and rights affected by water were important elements in

45. Reich, "Water Law," 884–906, quotes 893, 894, 906; see also 901 (San Diego), 907, 910 (Las Vegas), 912 (Laredo).

46. *Ibid.*, 914 (quote), 914–23 (riparian rights in Texas).

47. McKnight, "Spanish Watercourses of Texas," quotes from 374, 375, 376, 380, 381, 385, 386.

Spanish colonial grants in Texas,” without much clarity as to exact differences and components. Fortunately, after a half century of inattention and confusion, Texas experienced a progressive recovery of that understanding. “The first really serious research” on the subject took place in the Grubstake case of 1927 before the Texas Supreme Court, involving “one of the most difficult water puzzles of the *Partidas*,” with the court citing “some American compilations of Spanish and Mexican law” as well as “the *Partidas* in translation.” The field of water law disputes now receives “close attention,” though not all issues in it have been resolved by the new researches.

The ghost of Alfonso el Sabio has waxed and waned within the continental United States, but it still haunts our legal system. Partial inquiries such as those presented here are all that a historian can summon until a critical mass of specialist studies have accumulated, an eventuality not anticipated for our generation. The evidence for Alfonsine lineaments in United States law is still largely hidden away within an intimidating mass of court reports. Until that gold can be liberated from its veins and deposits, we must be satisfied with the dedicated labors of a relatively few miners. The king’s approach in the *Partidas*, or more accurately the approach of the jurists laboring under his active leadership and intervention, was didactic and ethical, “instructive and preventive rather than penal, as definitions and moral maxims are used skillfully to clarify, exhort, or admonish.”⁴⁸ Alfonso has much to say for environmentalists, for conservation and just distribution of natural resources, for control of business and municipal greed, and even for women’s economic rights and dignity. His environmental preoccupations were practical, functional, and respectful both of nature and community. He did not belong to the reactionary “eco-Jacobins” scolded by Thomas Woods, who make nature a Gaian goddess “and Western culture a kind of error.”⁴⁹ At the same time, Alfonso does not subscribe to radical individualism and the supremacy of private exploitation of public resources. The *Partidas* is a medieval code, with all the defects of content and perspectives that this circumstance entails, but it has also carried into our own legal heritage some salutary instruction and some seminal principles.

48. Robert A. MacDonald, “Law and Politics: Alfonso’s Program of Political Reform,” in *The Worlds of Alfonso the Learned and James the Conqueror*, ed. Robert I. Burns, S.J. (Princeton, N.J.: Princeton University Press, 1985), 150–202, 181.

49. Thomas Woods, “Guest Column,” *New Oxford Review* 66 (1999): 38.

ALFONSO X AND THE PARTIDAS

Joseph F. O'Callaghan

The *Siete Partidas* was a unique code of civil law enacted in medieval Europe. Following the model of Justinian's *Corpus iuris civilis*, the *Siete Partidas* was a true code, comprehensive and systematic, organized in books, titles, and laws.¹ As such it contrasts sharply with the other great legal works of thirteenth-century Europe. The *Constitutions of Melfi* drawn up at the command of Emperor Frederick II (1212–50) for his kingdom of Sicily also has the nature of a code, though by comparison with the *Siete Partidas* it is quite brief.² The treatise *De legibus et consuetudinibus Angliae* attributed to the English jurist Henri de Bracton is a descriptive account of English law based on the experience of the courts.³ Similarly, Philippe de Beaumanoir's *Coutumes de Beauvaisis* is a record of regional French law drawn from his experience as a royal judge in the province of Beauvaisis.⁴ The statutes enacted by Edward I of England (1272–1307), the Learned King's brother-in-law, who has often been called the English Justinian, treat of major areas of law but make no pretense to be a code of law.⁵

In time the *Siete Partidas* came to be the foundation of the legal system of the medieval kingdom of Castile-León, and later of modern Spain and of all the countries of the Spanish-speaking world colonized by Spain from the sixteenth century onward.⁶ The *Partidas* also had a profound impact on the other peninsular kingdoms in the Middle Ages as a result of translations into Portuguese, Catalan, and Galician.⁷

ORIGIN AND PURPOSE OF THE PARTIDAS

The *Siete Partidas* came into being as a result of a felt need for a uniform code of law in the kingdoms of Castile-León.⁸ Fernando III (1217–52), who definitively united those oft-separated kingdoms in 1230 and then subjected Islamic Córdoba, Jaén,

1. *Corpus iuris civilis*, ed. Theodor Mommsen et al., 3 vols. (Berlin: Weidmann, 1915–28).

2. *Liber augustalis*, in Jean L. A. Huillard-Breholles, *Historia diplomatice Friderici II*, 6 vols. in 12 (Paris: Plon, 1852–61), 4.1: 1–178. Cf. Powell's translation, James M. Powell, *The Liber augustalis or Constitutions of Melfi, Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231* (Syracuse, N.Y.: Syracuse University Press, 1971).

3. Henry de Bracton, *De legibus et consuetudinibus regni Angliae*, ed. Samuel Thorne, 4 vols. (Cambridge, Mass.: Harvard University Press, 1968–77).

4. Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, 2 vols. (Paris: Picard, 1899–1900). Cf. Akehurst's translation, F. R. P. Akehurst, *The Coutumes de Beauvaisis of Philippe de Beaumanoir* (Philadelphia: University of Pennsylvania Press, 1992).

5. See volume 1 of *The Statutes of the Realm*, 12 vols. (London: Public Record Office, 1810–28).

6. See the example cited by Jerry R. Craddock, "Legislative Works of Alfonso el Sabio," in *Emperor of Culture: Alfonso X the Learned of Castile and His Thirteenth-Century Renaissance*, ed. Robert I. Burns, S.J. (Philadelphia: University of Pennsylvania Press, 1990), 183, 238 n. 17; Evelyn Procter, *Alfonso X of Castile: Patron of Literature and Learning* (Oxford: Clarendon Press, 1951), 51; John E. Keller, *Alfonso X, el Sabio* (New York: Twayne, 1967), 116–17, 122–23.

7. A Portuguese translation was probably undertaken at the direction of King Dinis (1279–1325), Alfonso X's grandson. See the edition by José de Azevedo Ferreira, *Primeira partida: edição et étude* (Braga: Instituto Nacional de Investigação Científica, 1980). Pedro IV of Aragon (1336–87) commanded that a Catalan translation be executed. Procter, *Alfonso X*, 62; Alfonso García Gallo, *Manual de historia del derecho español*, 3rd ed., 2 vols. (Madrid: Artes Gráficas y Ediciones, 1967), 1: 394; Eelco Nicolaas van Kleffens, *Hispanic Law Until the End of the Middle Ages, with a Note on the Continued Validity After the Fifteenth Century of Medieval Hispanic Legislation in Spain, the Americas, Asia, and Africa* (Chicago: Aldine, 1968).

8. Procter, *Alfonso X*, 47–51.

Murcia, and Seville to his rule, recognized the desirability of applying one law in his diverse dominions, populated not only by Christians but also by significant numbers of Muslims and Jews.⁹ Preoccupation with the war against the Moors, however, made it difficult if not impossible for him to accomplish that goal, which he then entrusted to his son and successor Alfonso X.¹⁰

The Diversity of Laws in Castile-León

The juridical situation in the kingdoms of Castile-León at the accession of *el rey sabio* was quite complex.¹¹ To begin with, the old Visigothic Code promulgated in the seventh century under the title *Liber iudicum* (the *Book of Judges*), or *Liber iudiciorum*, or *Forum iudicum*, was still in use in the kingdom of León. Indeed, the right to appeal to a judgment based on that book was acknowledged. For its own time the *Liber iudicum* was also unique as it was a true code of law, organized, systematic, and comprehensive, and intended for application to all the people living within the Visigothic realm. It was the principal legacy of the Visigoths to later ages.¹² In neighboring Castile, however, unwritten, customary law tended to prevail, and judges there often rendered decisions on the basis of previous cases. Collections of these *fazañas* or judicial declarations were compiled. Also in the late twelfth and thirteenth centuries anonymous jurists began to assemble the territorial customary law of Castile in works such as the *Libro de los fueros de Castiella*.¹³ Books of this sort were essentially the result of private labors that were not promulgated and did not necessarily have royal sanction.

As the territory of both Castile and León in the Duero valley and stretching to the Tagus was organized in municipal districts in the eleventh and twelfth centuries, charters, or *fueros*,¹⁴ of varying length were drawn up containing the basic legal obligations of the citizens. Some *fueros* were prepared by the municipalities themselves and then received royal sanction. Among the most important of the *fueros* were those of Sepúlveda, Madrid, Zamora, and Salamanca. Not surprisingly some towns opted to copy the *fueros* of their neighbors, often verbatim. Recognizing the value of certain *fueros*, kings granted them to other towns, especially those in the same region. Concessions of this sort encouraged a degree of regional uniformity, and scholars have been able to establish the existence of families of *fueros*. The process of development of municipal *fueros* reached its peak in the *Fuero* of Cuenca given to that city after its conquest in 1177 by Alfonso VIII of Castile (1158–1214). The most extensive of all these legal documents, the *Fuero* of Cuenca was a substantial volume, though it lacked the organization one expects of a code of law. In any case, it was granted to

9. Julio González, *Reinado y diplomas de Fernando III*, 3 vols. (Córdoba: Monte de Piedad y Caja de Ahorros, 1980–86).

10. The second prologue to the *Siete Partidas* states that Fernando III “wished to do this [create the law code] if he had lived, and he commanded us to do it” (“lo quisiera facer si mas visquiera, e mando a Nos que lo feciesemos”); see *Las Siete Partidas del rey Alfonso el Sabio*, ed. Real Academia de la Historia (Madrid: Imprenta Real, 1807; reprint Madrid: Atlas, 1972), I, prólogo, p. 5.

11. For a general overview see Joseph F. O’Callaghan, *A History of Medieval Spain* (Ithaca, N.Y.: Cornell University Press, 1975), 63–68, 171–74, 271–77; Procter, *Alfonso X*, 48–50; García Gallo, *Manual*, 1: 386–87.

12. *Liber iudiciorum*, in *Leges Visigothorum*, ed. Karl Zeumer, *Monumenta Germaniae historica, Leges* 1 (Hannover and Leipzig, 1902), 33–456.

13. Galo Sánchez, *Libro de los fueros de Castiella* (Barcelona, 1924; reprint Barcelona: El Albir, 1981). For a discussion of the varieties of law see Aquilino Iglesia Ferreirós, “Derecho municipal, derecho señorial, derecho regio,” *Historia, instituciones, documentos* 4 (1977): 115–98.

14. *Fuero* is derived from Latin *forum*, a word originally meaning an open space, and then the area set apart in Rome for the conduct of legal and other business. In low Latin *forum* was used to mean law.

Iznatoraf, Alcázar, Baeza, and Úbeda, all towns of Upper Andalusia, and was adapted to the needs of the Extremaduran towns of Plasencia, Sepúlveda, and Zorita. Its influence on the *fueros* of Cáceres and Brihuega is also evident.¹⁵ In the meantime, Fernando III had given the order to translate the old Visigothic code, the *Forum iudicum*, into Castilian under the title *Fuero juzgo*. Granted to Toledo, Córdoba, Seville, Murcia, and Jerez de la Frontera, the *Fuero juzgo* thus became the foundation of municipal law in most of the towns of Andalusia and Murcia.¹⁶

As the forms of law multiplied, kings became more and more aware of the desirability of achieving uniformity in the law. That tendency was encouraged by the development of formal studies in Roman and canon law in the twelfth century. Spurred by the Gregorian reform, scholars began to gather, organize, and systematize the diverse sources of ecclesiastical law. The climax of this process was reached when the monk Gratian published about 1140 his *Concordance of Discordant Canons*, known more simply as the *Decretum*. Simultaneously the books of Justinian's legal corpus (the *Code*, the *Digest*, and the *Institutes*) were also brought to light and men began to study both canon and Roman law in the budding universities, especially in Bologna. Armed with this new knowledge and bearing the academic title master of laws, they then offered their services as authorities in the law to the monarchs of Europe.¹⁷ Masters of law appeared in Castile and León at least in the second half of the twelfth century and probably began to teach Roman and canon law in the Universities of Palencia and Salamanca, founded respectively by Alfonso VIII of Castile and Alfonso IX of León (1188–1230).¹⁸ Alfonso X on 8 May 1254 provided for a master of civil laws and an assistant, a bachelor canon, and a master of decretals or canon law, to teach at the University of Salamanca. Pope Alexander IV authorized the teaching of civil law there in 1255.¹⁹ Several of the early jurists working in Spain were of Italian origin, including Giacomo de' Giunti, commonly called Jacobo de las Leyes, who probably had a major role in the development of the *Partidas*.²⁰

The *Espéculo* and the *Fuero Real*

With the intention of relieving the confusion arising from the diverse laws utilized throughout his kingdoms, Alfonso X set out to prepare a uniform code of law of universal applicability.²¹ Three texts, known to modern scholars as the *Espéculo*, the

15. *Fuero de Cuenca: formas primitivas y sistemáticas: texto latín, texto castellano y adaptación del fuero de Iznatoraf*, ed. Rafael de Ureña y Smenjaud (Madrid: Real Academia de la Historia, 1935), translated by James Powers as *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier* (Philadelphia: University of Pennsylvania Press, 2000).

16. *Fuero juzgo en latín y castellano*, ed. Real Academia de la Historia (Madrid: Joaquín Ibarra, 1815); Joseph F. O'Callaghan, *The Learned King: The Reign of Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993).

17. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983).

18. Antonio García y García, "En torno al derecho romano en la España medieval," *Estudios en homenaje a Don Claudio Sánchez Albornoz en sus 90 años*, 3 vols. (Buenos Aires: Instituto de Historia de España, 1983–85), 3: 59–72; Joseph F. O'Callaghan, "The Beginnings of the Cortes in León-Castile," *American Historical Review* 74 (1969): 1509, n. 26.

19. C. M. Ajo González y Sáinz de Zúñiga, *Historia de las universidades hispánicas*, 11 vols. (Madrid: Consejo Superior de Investigaciones Científicas, 1957–79), 1: 439–42, nos. 9, 11; O'Callaghan, *Learned King*, 131–32.

20. *Obras del Maestro Jacobo de las leyes, jurisconsulto del siglo XIII*, ed. Rafael de Ureña y Smenjaud and Adolfo Bonilla San Martín (Madrid: Reus, 1924); Jacobo de las Leyes, *Summa de los nueve tiempos*, ed. Jean Roudil (Paris: Klincksieck, 1986).

21. Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio: A Critical Bibliography*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986); Craddock, "Legislative Works," 182–97; Robert A. MacDonald, "Law and Politics: Alfonso's Program of Political Reform," in *The Worlds of Alfonso the Learned and James the Conqueror*, ed. Robert I. Burns, S.J. (Princeton, N.J.: Princeton University Press, 1985), 150–202; Manuel González Jiménez, *Alfonso X, 1252–1284* (Palencia: Diputación Provincial, 1993), 256–63.

Fuero real, and the *Siete Partidas*, were drawn up in his court.²² The *Siete Partidas* may be said to take its origin from the earliest of the three books, the *Espéculo* or *Mirror of Laws* whose original title was probably *Libro del fuero* (the *Book of Law*) or *Libro del espejo del derecho* (the *Book of the Mirror of Law*).²³ Declaring the need to overcome the prevailing diversity of laws and to introduce reason into the administration of justice, the king firmly asserted his right to make laws so as to fulfill his obligation to maintain peace, justice, and law. The *Espéculo* was intended as a code of law to be applied in the royal court. As such it would serve as a mirror of laws by which all other laws would be judged. Only one codex containing the incomplete text of the *Espéculo* is extant and only five books out of a probable seven survive. Each book is divided into titles, which are further subdivided into individual laws.²⁴ The contents of the five surviving books are as follows. Book 1 speaks of law in general terms and then briefly discusses the articles of the Catholic faith. Book 3 is concerned with the duties of the king, the status of the royal family, the royal household, and the custody of royal castles. Book 3 takes up the king's relationship with his vassals, the organization of the army, and the nature and rules of war. Book 4 treats the administration of justice and the duties of judges and attorneys. Book 5 is devoted to judicial procedure and appeals to the royal court. Books 6 and 7 probably considered the status of persons, property, contracts, and criminal law. The last two books are not extant, but it seems likely that they were later incorporated in modified form into the *Partidas*.

The *Fuero real*, complete in four books, survives in numerous copies because the king granted it as a code of municipal law to the towns of Castile and Extremadura.²⁵ One could appeal from a judgment rendered on the basis of the *Fuero real* to the royal court where the law of the *Espéculo* would be applied. Although the point is debated, I think Robert MacDonald is right in proposing that Alfonso X promulgated both the *Espéculo* and the *Fuero real* in the Cortes of Toledo in March 1254.²⁶ Judging from

22. Alfonso García Gallo, "El *Libro de las leyes* de Alfonso el Sabio: del *Espéculo* a las *Partidas*," *Anuario de historia del derecho español* 21–22 (1951–52): 345–528; "Nuevas observaciones sobre la obra legislativa de Alfonso X," *Anuario de historia del derecho español* 46 (1976): 609–70; "La obra legislativa de Alfonso X: hechos e hipótesis," *Anuario de historia del derecho español* 54 (1984): 97–161. On the contrary see Aquilino Iglesia Ferreirós, "Alfonso X el Sabio y su obra legislativa: algunas reflexiones," *Anuario de historia del derecho español* 50 (1980): 531–61; "Cuestiones alfonsinas," *Anuario de historia del derecho español* 55 (1985): 95–149; "La labor legislativa de Alfonso X el Sabio," in *España y Europa: un pasado jurídico común, actos del I simposio internacional del Instituto de derecho común*, ed. Antonio Pérez Martín (Murcia: Instituto de Derecho Común, 1986), 275–599.

23. *Espéculo: texto jurídico atribuido al rey de Castilla Don Alfonso el Sabio*, ed. Robert A. MacDonald (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1990), xvii–xviii.

24. Another codex only contains book 3. In addition to MacDonald's edition cited in the previous note, see *Espéculo*, ed. Gonzalo Martínez Díez and José Manuel Ruiz Asencio, *Leyes de Alfonso X*, edición y análisis crítico, vol. 1 (Avila: Fundación Sánchez Albornoz, 1985); *Espéculo*, in *Opúsculos legales del rey Don Alfonso el Sabio*, 2 vols. (Madrid: Imprenta Real, 1836), 1: 1–474.

25. *Fuero real*, in *Opúsculos legales*, 2: 1–169; *Fuero real*, ed. Gonzalo Martínez Díez, José Manuel Ruiz Asencio, and C. Hernández Alonso (Avila: Fundación Sánchez Albornoz, 1988). Most of the codices were dated at Valladolid between 25 and 30 August 1255. Jerry R. Craddock, "La cronología de las obras legislativas de Alfonso X el Sabio," *Anuario de historia del derecho español* 51 (1981): 376–79; Craddock, "Legislative Works," 184–87, who says that forty manuscripts are extant. Robert A. MacDonald, "Progress and Problems in Editing Alfonsine Juridical Texts," *La Corónica* 6 (1978): 74–81, identified thirty-six medieval codices. The *Fuero real* was translated into Portuguese.

26. Joseph F. O'Callaghan, "Sobre la promulgación del *Espéculo* y del *Fuero real*," in *Estudios en homenaje a Don Claudio Sánchez Albornoz*, 3: 167–79; MacDonald, *Espéculo*, xlvii–l; and "El *Espéculo* atribuido a Alfonso X, su edición y problemas que plantea," in Pérez Martín, *España y Europa*, 636–44; Francisco Martínez Marina, *Ensayo histórico-crítico sobre la antigua legislación y principales cuerpos legales de los reynos de León y Castilla* (Madrid: Joaquín Ibarra, 1808), 250–53, 349–50; Aquilino Iglesia Ferreirós, "*Fuero real* y *Espéculo*," *Anuario de historia del derecho español* 52 (1982): 111–91; and *La creación del derecho: una historia de la formación de un derecho estatal español*, 2 vols. (Barcelona: Cigna, 1992), 2: 6–15. Iglesia Ferreirós concluded that the *Espéculo* was abandoned in favor of the *Partidas* and so was never in force.

internal and external circumstances, Jerry Craddock concluded that the *Espéculo* was a finished book of law that was in force until the completion of the *Partidas* in 1265.²⁷

FORMATION OF THE PARTIDAS

In the prologue to the *Espéculo* the king reserved to himself the right to amend the code, if necessary, with the counsel of his court. A monumental change in his own circumstances apparently justified an emendation that resulted in the *Siete Partidas*. After his recognition as Holy Roman Emperor by the ambassadors of Pisa in March 1256 and his subsequent election as such in 1257, Alfonso X evidently decided to revise his law code to reflect the universal status he had just attained.²⁸

Codices and Editions

Before proceeding further, two major difficulties relating to the study of the *Partidas* must be addressed; one concerns the manuscripts and the second the printed editions.²⁹ No extant codex containing the complete text of the *Partidas* can be dated without question to the reign of Alfonso X. All the surviving codices are clearly the work of fourteenth- or fifteenth-century scribes.³⁰ García y García compiled a list of 115 manuscripts of the entire *Siete Partidas* or parts thereof in Castilian, Galician, Portuguese, and Catalan, located in libraries in Spain (Escorial, Madrid, Toledo, Oviedo, Valencia, Valladolid, Vitoria), Portugal (Braga, Lisbon, Coimbra), New York (Hispanic Society), Paris, London, and elsewhere. Until the manuscript tradition has been clearly established all statements concerning the *Partidas* can only be regarded as provisional conclusions.³¹

A critical edition of the *Partidas* is also a desideratum. There are essentially three editions of the entire work, but none of them meet the standards of modern critical scholarship.³² The first edition was that of Alonso Díaz de Montalvo, published in Seville in 1491. Gregorio López issued a new edition, with an extensive gloss, at Salamanca in 1555, and an anonymous team produced a third edition under the auspices of the Real Academia de la Historia in 1807.³³ In practical terms Gregorio

27. Craddock, "Cronología," 373–75. Two instances of the application of the *Espéculo* may be cited. In an ordinance of 31 August 1258 Alfonso X instructed the municipal judges of Valladolid in the manner of adjudicating pleas, excerpting portions of the *Espéculo* (IV.ii.7–9, 11, 13–14, 16, 18). Three years later on 21 February, when rendering judgment in a dispute between the municipal council and the archbishopric of Compostela, the king included laws taken from the *Espéculo* (IV.x.3; IV.xi.1, 5–10, 12, 14) concerning the manner of conducting an inquest (*pesquisa*). García Gallo, "El Libro de las leyes," appendix 4, 513–28; José Luis Bermejo Cabrero, "En torno a la aplicación de las *Partidas*: fragmentos del *Espéculo* en una sentencia real de 1261," *Hispania* 30 (1970): 169–77. In this instance the parallel passages in the *Partidas* are *Partidas*, III.xvii.1–3; V.ix.12, 22.

28. O'Callaghan, *Learned King*, 198–213.

29. See the very balanced judgments of MacDonald, "Progress and Problems in Editing Alfonsine Juridical Texts," *La Corónica* 6 (1978): 74–81; 7 (1979): 119–20.

30. García Gallo, *Manual*, 1: 259. MacDonald, *Espéculo*, xvii, attributes the disappearance of extant codices to the internal struggles of the king's later years and of the early fourteenth century.

31. Antonio García y García, "Tradición manuscrita de las *Siete partidas*," in his *Iglesia, sociedad y derecho*, Bibliotheca Salmanticensis, Estudios 74 (Salamanca: Universidad de Salamanca, 1985), 251.

32. García Gallo, "El Libro de las leyes," 350–59; García y García, "Tradición," 252; Procter, *Alfonso X*, 51–52, 62.

33. *Las Siete partidas de Alfonso X el Sabio*, ed. Alonzo Díaz de Montalvo, 2 vols. (Seville: Meynardo Ungut and Lançalao Polono, 25 October 1491); *Las Siete partidas del sabio rey Don Alonso el nono [=X], nuevamente glosadas por el licenciado Gregorio López*, 7 vols. in 4 (Salamanca: Andrea de Portonariis, 1555; facsimile reprint Madrid: Boletín Oficial del Estado, 1974); *Las Siete partidas del rey Don Alfonso el Sabio*, ed. Real Academia de la Historia, 3 vols. (Madrid: Imprenta Real, 1807; reprint Madrid: Atlas, 1972).

López's edition gained general acceptance among judges and jurists, though after 1807 the Academy's edition began to be cited in the courts as well.³⁴

In recent years Juan Antonio Arias Bonet published a text of the *Primera partida* written in the royal scriptorium about 1290 and now preserved in the British Library (BL Add. 20787).³⁵ A related manuscript kept in the Hispanic Society of New York (HC 397/573) has also been printed.³⁶ In the discussion that follows reference will be made to the editions of the entire text by López and the Academy, and Arias Bonet's edition of the *Primera partida* in the British Library.

Period of Composition

Prompted by the king's election as Holy Roman Emperor, the British Library text was probably an early revision amplifying the first book of the *Especulo*. As it was the king's practice to attempt to improve an original text of other works produced by his scriptorium, it seems quite likely that his great law book was subjected to a similar process of editing and revising. Thus the texts published by López and by the Academy constitute another revision executed later in the reign. While García Gallo thought that the *Partidas* were revised in the fourteenth century and thus were not the work of Alfonso X, Iglesia Ferreirós and Craddock hold that the two revisions just cited were completed during his reign and that the editions by López and the Academy substantially represent the text of the *Siete Partidas* as it was completed by the king and his anonymous collaborators.³⁷ This accords with the royal chronicle, which affirmed that Fernando III "had begun to make the books of the *Partidas*" and Alfonso X "brought them to completion and ordered all the men of his realms to keep them as the law and *fuero* and the judges to judge pleas in accordance with them."³⁸

The manuscripts place the composition of the *Partidas* in two different periods. British Library 20787, the thirteenth-century version of the first book, states that the work was begun in the fourth year of the king's reign, in the month of June, on the vigil of St. John the Baptist, in the era 1294 (that is, 23 June 1256), and that it was completed in the king's thirteenth year in the month of August on the eve of the martyrdom of St. John the Baptist in the era 1303 (28 July 1265).³⁹ On the other hand, the prologue to the texts edited by López and the Academy affirms that the task was commenced on 23 June 1256 and was completed within seven years.⁴⁰ Craddock argues that dating the entire work between 1256 and 1265 is reasonable and need not be rejected. Indeed

34. García y García, "Tradición," 249–83; García Gallo, *Manual*, 1: 398. Contrary to García Gallo, Iglesia Ferreirós in "Labor legislativa de Alfonso X el Sabio," 283, 513–17, believes that the edition of Gregorio López reflects the original work of Alfonso X.

35. Juan Antonio Arias Bonet, *Primera partida según el manuscrito Add. 20787 del British Museum* (Valladolid: Universidad de Valladolid, 1975). The text makes no mention of *partidas* and is more properly identified as the *Libro del fuero de las leyes*. J. Homer Herriott, "A Thirteenth Century Manuscript of the *Primera Partida*," *Speculum* 13 (1938): 278–94. The text (identified as B.R. 3, said to date from the fifteenth century, but now lost) printed at the foot of the Academy's edition of the *Siete partidas* 1: 1–177 is essentially the same as British Library 20787. García Gallo, "El Libro de las leyes," 359–63; Procter, *Alfonso X*, 52–53, 63.

36. *Primera partida* (MS HC 397/573), *Hispanic Society of America*, ed. Francisco Ramos Bossini (Granada: Caja General de Ahorros y Monte de Piedad de Granada, 1984).

37. García Gallo, "El Libro de las leyes," 402–19, believed that there were four redactions, the first being the *Especulo* and the fourth being completed perhaps around 1325. Perhaps another, a fifth revision, was done about 1340. Iglesia Ferreirós, "Alfonso X el Sabio y su obra legislativa," 557–60; Craddock, "Cronología," 386–400.

38. *Crónica del rey don Alfonso X*, 8, chap. 9, in *Biblioteca de autores españoles* 66 (1953): 3–66. For a review of references to the Alfonsine codes in historical literature from the thirteenth century onward see Aquilino Iglesia Ferreirós, "Alfonso X, su labor legislativa y los historiadores," *Historia, instituciones, documentos* 10 (1982): 9–112.

39. Arias Bonet, *Primera partida*, 3. The *Primera partida* (MS HC 397/573), 1, also dates the composition between 23 June 1256 and 29 August 1265, as does B.R. 3, the text printed at the foot of the Academy's *Siete partidas*, 1: 1.

40. López, *Siete partidas*, 1: 3v–4r; Academy, *Siete partidas*, 1: 5–6.

there seems no reason why all the books could not have been finished within nine years. The statement that the work was completed in seven years, in Craddock's view, is fanciful and was adopted because of an increasing fascination with the number seven.⁴¹

Title and Internal Divisions

The title by which King Alfonso and his collaborators knew this law code has been a subject of much discussion.⁴² The introduction to the British Library manuscript calls it "el Libro del fuero de las leyes que fizo el noble don Alfonso."⁴³ The epigraph preceding the Academy's text identified the work as the *Libro de las leyes* or *Book of the Laws*.⁴⁴ Explaining that the work is divided into seven parts, the prologue to both López's and the Academy's editions uses the word *Septenario*, "a very noble number that the ancient wise men praised highly." In his last will, dated 10 January 1284, the king bequeathed to his successor "the book that we made with the name *Setenario*."⁴⁵ It has been thought that the king referred to the work known today as the *Siete Partidas*. Indeed, Craddock thinks that Alfonso X in his later years determined to name his code the *Septenario* or *Setenario*. If that were his intention, he did not succeed. Rather, the sevenfold division encouraged the usage in the early fourteenth century of the title *Siete Partidas*, by which the code has been known ever since. The *Setenario* known to scholars today is not the *Siete Partidas*, but is, in Craddock's view, an unfinished attempt to further revise the *Primera Partida*.⁴⁶

The importance of the number seven in twelfth- and thirteenth-century thought is reflected in such familiar concepts as the Seven Liberal Arts, the Seven Sacraments, the Seven Gifts of the Holy Spirit, the Seven Joys and Sorrows of the Virgin Mary as illustrated in the *Cantigas de Santa Maria*, and the Seven Ages of Man.⁴⁷ In the realm of law, moreover, Alfonsine jurists knew that Justinian's *Digest* was divided into seven parts. Not surprisingly, therefore, Alfonso X's code is divided into seven parts or *partidas*. Throughout the text there are frequent cross references to individual *partidas*.⁴⁸ Scholars have noted that, in honor of Alfonso X, each of the seven *partidas*

41. Craddock, "Cronología"; and "La nota cronológica inserta en el prólogo de las *Siete partidas*: edición crítica y comentario," *Al-Andalus* 39 (1974): 363–90; García Gallo, "El Libro de las leyes," 399–402.

42. MacDonald, *Espéculo*, xvii–xviii, comments on the title of the *Espéculo* as well as royal practice with respect to other titles published under the king's name.

43. Arias Bonet, *Primera partida*, 1. The Hispanic Society text edited by Ramos Bossini, *Primera partida*, 1, also states: "este es el prologo del libro del fuero de las leyes que fizo el noble don Alfonso." Procter, *Alfonso X*, 53; MacDonald, "Law and Politics," 180–81.

44. This epigraph is not found in López's edition. García Gallo, *Manual*, 1: 388, 391–93, believed that the original title of the *Espéculo* was *Libro del fuero* or *Fuero del libro*, and that this was modified to *Libro del Fuero de las leyes* and then to *Libro de las leyes*.

45. Manuel González Jiménez, *Diplomatario andaluz de Alfonso X* (Seville: El Monte, Caja de Huelva y Sevilla, 1991), 560, no. 521.

46. Craddock, "Legislative Works," 184, 192; and "El *Setenario*: última e inconclusa refundición alfonsina de la primera partida," *Anuario de historia del derecho español* 56 (1986): 441–66. He does not believe that the *Setenario* was the king's earliest legal work as has often been supposed. Kenneth Vanderford edited the *Setenario* (Buenos Aires, 1945; reprint Barcelona: Crítica, 1984). I think that the *Setenario* was intended to be a mirror of princes. See O'Callaghan, *Learned King*, 135–36.

47. Ernst Curtius, *European Literature and the Latin Middle Ages* (New York: Harper Torchbooks, 1963), 504, commented that, through the following verse in the Book of Wisdom, 11: 26: "Omnia in mensura, numero et pondere dispositi," "number was sanctified as a form bestowing favor in the divine work of creation."

48. For example, *Partidas*, VII.xxxiii, prologue, mentions "todas las siete partidas deste nuestro libro." Jerry R. Craddock, "How Many *Partidas* in the *Siete Partidas*," in *Hispanic Studies in Honor of Alan D. Deyermond: A North American Tribute*, ed. John S. Miletich (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1986), 83–92, points out that the *Libro del fuero de las leyes* refers to books rather than *partidas*. On the other hand, the fourth *partida* (IV.ix.13) cites the "libro seteno en el titulo de los adulterios."

begins with an initial letter of his name.⁴⁹ Each *partida* is further subdivided into titles and laws; a prologue to each title explains the theme of that title and the specific topics discussed in the laws that follow.⁵⁰

Authorship

While the prologue in all these texts categorically states that Alfonso X made the laws contained in this book,⁵¹ no one doubts that compilation was a collaborative task undertaken by a company of anonymous jurists in royal service. That was the practice with the other works of history, literature, and science published in the king's name. Evelyn Procter stressed that the king's role was that of a general editor supervising a team of legal scholars.⁵² Those whose names are most frequently mentioned include Fernando Martínez de Zamora (d. 1275), author of the *Margarita de los pleitos*, a treatise on procedure;⁵³ Maestre Roldán, who composed the *Ordenamiento de las tafurerías* in 1276 on the king's command because the subject of gambling and gambling houses had not been treated at length in the books of law;⁵⁴ and Jacobo de las Leyes (d. 1294), who wrote the *Flores del derecho* for the instruction of Alfonso X and the *Doctrinal de los pleitos* for the benefit of the author's son Bonajunta.⁵⁵

Sources

Those anonymous jurists drew on a vast repertory of material when they drafted this new code of law, but the study of the sources still requires organized and comprehensive attention.⁵⁶ The sources most frequently mentioned are "los sabios antiguos" (the wise men of old) or "los sabios antiguos que fizieron las leyes" (the wise men of old who made the laws), which likely means such legal sources as the *Corpus iuris civilis* and the writings of the thirteenth-century civilians, especially Franciscus Accursius and Az(z)o of Bologna. Also utilized, especially in the first and fourth *partidas*, were the principal works of canon law, namely, Gratian's *Decretum*, the *Decretales* of Pope Gregory IX, and the commentaries of the canonists Hostiensis and Ramon

49. The initial letters of the opening words of the *partidas* combine thus:

- I. A seruicio de Dios
- II. La ffe cathólica
- III. Fizo Nuestro Sennor Dios
- IV. Onras sennaladas
- V. Nascen entre los ommes
- VI. Sesudamente dixerón
- VII. Oluidança et atreuimiento

50. The sevenfold division is not an equal one. In the Academy edition the number of pages for the seven *partidas* is 507, 346, 433, 150, 103, 157, and 209 pages respectively.

51. *Partidas*, prologue: "et por esta razon fecimos señaladamente este nuestro libro, por que siempre los reyes de nuestro señorío caten el así como en el espejo que vean las sus cosas que han de enmendar et las enmienden, et segunt aquesto que lo fagan los suyos."

52. Procter, *Alfonso X*, 3; MacDonald, *Espéculo*, 491–504, appendix 5, lists possible collaborators in the king's legislative work.

53. Joaquín Cerdá, "La Margarita de los pleitos de Fernando Martínez de Zamora," *Anuario de historia del derecho español* 20 (1950): 634–738.

54. Maestre Roldán, *Ordenamiento de las tafurerías*, in *Opúsculos legales*, 2: 213–31. Alfonso X enacted a brief law concerning *tafurerías* in the Assembly of Jerez in 1268, art. 35, *Cortes de los antiguos reinos de León y Castilla*, 5 vols. (Madrid: Real Academia de la Historia, 1851–1963), 1: 78.

55. Ureña y Smenjaud and Bonilla San Martín, *Obras*; Jacobo de las Leyes, *Summa*; García Gallo, "El Libro de las leyes," 423–28.

56. José Amador de los Ríos, *Historia crítica de la literatura española*, 7 vols. (Madrid: the author, 1861–65; reprint Gredos, 1968), 3: 546–47, 621–27; Procter, *Alfonso X*, 64–65; Keller, *Alfonso X*, 120–22.

de Penyafort, O.P. Also providing material especially relating to the obligations of knights were the Lombard *Libri feudorum*.⁵⁷ Moreover, the compilers often cited the *Fuero antiguo de España*, apparently meaning the customary law of the kingdom. They were also familiar with the *Fuero juzgo*, the municipal *fueros*, the *Fuero real*, and the *Espéculo*.

Aside from the legal sources, the compilers also drew on the wisdom of the ancient Greek philosopher Aristotle, whose influence on European philosophical thought steadily increased in the thirteenth century. Explicit and implicit citations appear, especially of his *Ethics* and *Politics*, but it is uncertain whether they were drawn from a Latin or a Castilian text. Other ancient authors included the philosopher Seneca "who was a native of Córdoba," the orator Cicero, Vegetius the author of *De re militari*, and Boethius, whose *Consolation of Philosophy* was one of the most widely read books in the Middle Ages. The Bible, particularly the Psalms and Proverbs, and the Fathers of the Church—"los santos padres"—were also utilized. Among the sources of the second *partida* were the *Disciplina clericalis* of Petrus Alfonsi and the texts of Arabic origin known as *Bocados de oro* and *Poridad de poridades*.⁵⁸ Finally, preeminent among the "sabios antiguos de España"—"the wise men of old of Spain"—was Isidore of Seville.

The amplified text of the *Partidas* combined in a highly original manner elements drawn from Roman and canon law, theology, and philosophy, which accentuated its doctrinal character.⁵⁹ MacDonald summed it up in these words:

The *Siete partidas* represents an encyclopedic and systematic integration of definition, prescription, explanation, and amplification of materials from many sources—classical and contemporary, canonical and secular, Roman and Castilian, legal and literary—in different languages.⁶⁰

García Gallo suggests that the *Partidas* is a monument, unlike any other contemporary European work of law, to the *ius commune* derived from Roman, canon, and feudal law. In his judgment the *Partidas* occupies in the field of thirteenth-century law the place held by the *Summa theologia* of Thomas Aquinas in theology.⁶¹

Promulgation

Scholars generally agree that the *Siete Partidas* was never explicitly promulgated by Alfonso X, although the royal chronicle, written probably before the middle of the

57. Román Ríaza Martínez Osorio, "Las Partidas y los *Libri feudorum*," *Anuario de historia del derecho español* 10 (1933): 5–18.

58. Galo Sánchez, *Curso de historia del derecho: introducción y fuentes*, 9th ed. (Madrid: Reus, 1960), 91. *Poridad de las poridades*, ed. Lloyd A. Kasten (Madrid: A. Aguirre Torre, 1957), is a Castilian translation of the pseudo-Aristotelian *Secretum secretorum*.

59. García y García, "Tradición," 259–60, emphasized that at first glance the *Partidas* appears to be an academic work, a doctrinal treatise on law rather than a legal code. Galo Sánchez, *Curso*, 91, remarked on the encyclopedic character of the *Partidas*, again noting that it seemed often to have more of a doctrinal than a legal character, and that it often discoursed on topics that were not legal in nature. He also stressed the artistic and literary quality of the work that had much to do with its general acceptance.

60. MacDonald, "Law and Politics," 181. The obvious desire to be comprehensive and to explain and define—there are numerous instances when the Latin words for legal things or situations are given—accords with the king's attitude expressed in his other works.

61. García Gallo, *Manual*, 1: 393–94. Pointing to the universal character of the work and the fact that there is no reference to Castile or Spain other than in the royal intitulation in the prologue, Rafael Gibert, *Historia general del derecho español* (Madrid: F. Roman, 1968), 41–45, suggested that the *Partidas* was intended as a law for the Holy Roman Empire and that the king likely intended to have the work translated into Latin. There are frequent linkages between emperors and kings throughout the text.

fourteenth century, stated that the king “commanded that all the men of his realms should accept them [the *Partidas*] as the law [*por ley e por fuero*] and the judges should adjudicate pleas according to them.”⁶² Nevertheless, if he promulgated the *Espéculo* in the Cortes of Toledo in 1254 as I believe, and reserved the right to amend that text if necessary, as he did in the prologue, then the need to promulgate as a distinct code of law the revised text we know today as the *Partidas* may not have seemed evident to him. If that was the king’s way of thinking, and I think it was, then the *Partidas*, completed between 1256 and 1265 according to the first prologue, could be said to have the force of law in his court.⁶³

Throughout the code one encounters the language of command or enforcement, for example: “mandamos”—“we command” (III.iii.8; VII.i.20); “tenemos por bien”—“we hold it right” (VI.iii.18; VII.ii.5); “tenemos por bien e mandamos”—“we hold it right and we command” (III.ii.43);⁶⁴ “porende diximos”—“therefore we state” (V.ii.2); “otrossi dezimos”—“we also state” (V.ii.3); “ca derecho es”—“because it is the law” (VI.i.23); “assi como mandan las leyes deste libro”—“as the laws of this book command” (III.iii.1; III.iii.9). Speaking of his judges, the king ordered them “to adjudicate [pleas] well and loyally . . . and by the laws of this book and not by any other” (III.iv.6). He also clearly stated the obligation of all his people to know his laws: “Ca tenemos que todos los de nuestro señorío deuen saber estas nuestras leyes”—“We hold that all those of our dominion ought to know these our laws” (V.xiv.31).⁶⁵ Fines imposed for violations of the law were reserved for the *camara del rey* or royal chamber (VII.i.8). These expressions, which could be multiplied, suggest that the king’s clear intention was that the *Partidas* should be the law applied in his court.

During the Cortes of Burgos in 1272 the nobles and the townspeople reacted against royal innovations in the law, prompting Alfonso X to confirm the customs of the nobility and the *fueros* of the towns. Moreover, he agreed to appoint noble judges (*alcaldes de fijosdalgo*) to hear suits involving members of the nobility according to their traditional customs. In doing so he retreated from his attempt to establish the *Fuero real* as a uniform municipal code and from the application in his court of the laws of the *Espéculo*, or in its revised form the *Partidas*, to the exclusion of customary law. Two years later, after consulting his judges, he enacted the Ordinance of Zamora, reorganizing the royal tribunal and specifying those pleas (*casos de cortes*) over which his court would have exclusive jurisdiction. Iglesia Ferreirós suggests that this may have resulted in the second redaction of the *Partidas*.⁶⁶

I believe it is reading too much into the scanty evidence available to conclude that the *Partidas* was set aside entirely as a result of the confrontation at Burgos in 1272 or transformed from a code of law into a legal encyclopedia. I strongly doubt that Alfonso X was content to consider the *Siete Partidas* merely a handy academic reference tool.

62. *Crónica del rey don Alfonso X*, 8, chap. 9. The chronicle places this in 1260, the eighth year of the king’s reign, but the chronology of this work is notoriously faulty. The author of the chronicle was probably Fernán Sánchez de Valladolid, chancellor of Alfonso XI (1312–50).

63. O’Callaghan, *Learned King*, 34–37; MacDonald, “El *Espéculo* atribuido a Alfonso X,” 636–44.

64. I suspect that laws including this language may have been promulgated separately and then incorporated into the *Partidas*.

65. Women, minors, and simple workmen were among those excused, but so also were knights of his court, who should endeavor to use arms rather than to learn laws: “los nuestros caualleros mas se deuen trabajar en uso de armas que en aprender leyes.”

66. Aquilino Iglesia Ferreirós, “Las Cortes de Zamora de 1274 y los casos de corte,” *Anuario de historia del derecho español* 41 (1971): 945–71; Craddock, “Legislative Works,” 184, avers that the *Partidas* “was conceived originally as a uniform code for all of Alfonso’s domains, before being redefined in 1274 as a body of general law to be applied principally in appeals to the king’s bench or in cases where royal jurisdiction is primary.” O’Callaghan, *The Cortes of Castile-León, 1188–1350* (Philadelphia: University of Pennsylvania Press, 1989), 117–20; and *Learned King*, 218–30.

The juridical situation thereafter was somewhat ambiguous, as the *Fuero real* obviously was not discarded but continued to be used side by side with the older *fueros*. The citation of two laws from the seventh *partida* in the *Leyes del estilo*, a text describing the practice of the royal tribunal at the end of the thirteenth century, also gives one reason to believe that the court continued to make use of the *Partidas*.⁶⁷

That being the case, Alfonso XI (1312–50) was incorrect when he stated in the Ordinance of Alcalá (art. 64) in 1348 that “there is no mention that they [the *Partidas*] were published until now by command of the king, nor that they were held and received as laws.” Nevertheless, given his assumption, Alfonso XI declared that the *Partidas* would have the force of law and he ordered that they be written in two books, one sealed with his golden seal and the other with his leaden seal, to be kept in his chamber. Whether those copies were ever made has not been determined.⁶⁸

CONCLUSION

Surely no medieval king of Castile-León was more interested in the law and more concerned to use the law as a means of unifying his realms under one royal authority than Alfonso X. The reaction against his legal innovations in 1272 by those who wished to preserve the old customs and ways was to be expected. Whereas the king confirmed both the customs of the nobility and the traditional *fueros* of the townspeople at that time, he did not abandon the ideas, principles, and aspirations embodied in the *Siete Partidas*. Unfortunately, illness (apparently a cancer affecting his face and causing his eye to protrude) made him increasingly irascible in the last decade of his reign and led him to act more and more arbitrarily.⁶⁹ In his confrontation with the nobles at Burgos in 1272 he insisted on the legality of his position, but his execution of Fadrique and Simón five years later was done without any trial. That and other erratic behavior, such as the execution of Zag de la Maleha, a Jew who had long served him faithfully as a tax collector, led to the accusation that the king denied due process of law to his subjects.⁷⁰ The complaint about “false inquests” also underscored the belief that the king no longer maintained his people in “justice, peace and law.” As a consequence Alfonso X was deprived of royal authority in the spring of 1282 by his son Sancho and the assembled estates of the realm. Although the king retained the support of Seville and Murcia, he had only a faint hold on his kingdoms in the two years before his death in 1284.⁷¹ It is a great irony that a king who spoke so eloquently about justice and the law should be brought down by his failure to preserve it.

67. The *Leyes del estilo*, in *Opúsculos legales*, 2: 235–352, concerns the practice of the royal court during the reigns of Sancho IV (1284–95) and of Fernando IV (1295–1312). *Leyes* 43 and 164 cite the *Setena partida*, VII.xii.3 and VII.xiv.7 respectively. MacDonald, “Law and Politics,” 180. One should also note that although Alfonso X expressed his willingness to give up the collection of customs duties, he did not do so; moreover, he did not give up entirely the right to collect taxes from the dependents of the nobility which had been agreed upon in 1269; a compromise reduced the amount but did not eliminate the taxes. O’Callaghan, *Cortes of Castile-León*, 135–36, 158–60.

68. *Ordenamiento de Alcalá*, in *Cortes de los antiguos reinos de León y Castilla*, 1: 541–42; Procter, *Alfonso X*, 50–51. Iglesia Ferreirós, “Alfonso X el Sabio y su obra legislativa,” 559, thinks that Alfonso XI’s planned revision was never carried out. See Alfonso Otero, “Las Partidas y el Ordenamiento de Alcalá en el cambio del ordenamiento medieval,” *Anuario de historia del derecho español* 63–64 (1993–94): 451–548.

69. Maricel Presilla, “The Image of Death and Political Ideology in the *Cantigas de Santa Maria*,” in *Studies on the Cantigas de Santa Maria: Art, Music and Poetry*, ed. Israel Katz and John E. Keller (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1987), 403–59.

70. O’Callaghan, *Learned King*, 250.

71. *Ibid.*, 258–69.

THE PARTIDAS: BIBLIOGRAPHICAL NOTES

Jerry R. Craddock

These notes concentrate on work published since 1980, the approximate cut-off point of my 1986 legislative work on Alfonso X.¹ The entries are discussed under the three main headings used in that work: manuscripts, editions, and studies.

MANUSCRIPTS

A useful census of manuscripts was prepared by Antonio García y García and published twice in close succession; the more recent version is preferable.²

The most important new datum under this rubric is that a long-lost manuscript, crucial to the textual tradition of the *Partidas*, was discovered safe and sound in a private collection in Madrid.³ It contains the first two *partidas*, one belonging to the Biblioteca Nacional, Madrid, with the shelf number X-131, and was partially edited as a parallel text in the Real Academia de la Historia edition of 1807, where it bore the siglum "[B]iblioteca] R[eal]." With this manuscript, all the textual witness used in that edition has been definitively identified.

The manuscript was located independently and almost simultaneously by Ángel Gómez Moreno, Universidad Complutense, Madrid, and Gonzalo Martínez Díez, Universidad de Valladolid, in the collection Zabálburu, which forms part of the library of the Marquises of Heredia Spinola in Madrid, now happily converted into an institution open to the public. Gómez Moreno provided me with the following description, which I translate: "manuscript in a display cabinet with no shelf mark. Binding seventeenth-eighteenth century in red leather over wood. Vellum. 1 + 223ff. 325 x 252 mm. Exquisite border on f. 1r (the first unnumbered folio contains the table of contents). Gothic book hand ca. 1400 (according to the card catalog, the manuscript was copied in the fourteenth century, but it clearly belongs to the beginnings of the fifteenth)."⁴ The text is in two columns, and, most important, the first folio has not disappeared as I once feared. The manuscript almost certainly is a "twin"; that is, it originally formed part of the same copy of the *Partidas* as MS 88, Convento de Predicadores, Valencia (the third and fourth *partidas*).⁵

The *Partidas* was translated during the Middle Ages into Catalan, Galician, and Portuguese. There has in fact been far more codicological analysis of the manuscripts and fragments that embody these translations than that devoted to the Castilian

1. Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio: A Critical Bibliography*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986).

2. Antonio García y García, "Tradición manuscrita de las *Siete partidas*," in his *Iglesia, sociedad y derecho*, Bibliotheca Salmanticensis, Estudios 74 (Salamanca: Universidad de Salamanca, 1985); García y García, "Tradición manuscrita de las *Siete partidas*" in *España y Europa, un pasado jurídico común*, ed. Antonio Pérez Martín, Actas del I Simposio Internacional del Derecho Común, Murcia, 26–28 March 1985 (Murcia: Publicaciones del Instituto de Derecho Común, Universidad de Murcia, 1986), 655–99.

3. Craddock, *Legislative Works*, 54–55, no. Ah58; García y García, "Tradición" (1986): 691, no. 77.

4. Ángel Gómez Moreno, personal communication with author, 6 November 1987.

5. Craddock, *Legislative Works*, 58, no. Ah78; García y García, "Tradición" (1986): 698, no. 113. For further details see Marilyn Stone, "MS 88, Library of the Dominican Convent of Valencia (Third and Fourth *Partidas*): Some New Hints About Its History," *La Corónica* 19, 1 (1990): 137–40.

codices. Aquilino Iglesia Ferreirós subjected MS 942, Biblioteca de Catalunya, Barcelona (second *partida*, in Catalan), to close scrutiny⁶; his work should be the model for a similar study of each and every textual witness of the *Partidas*.

In Portugal, manuscripts of two *partidas* (the first and third) have survived, but otherwise there exist a surprisingly large number of fragments; in Galicia only fragments, though rather numerous, have come to light. Inevitably one gets a mental picture of the denizens of the western reaches of the Peninsula, once Alfonso X and his law books had become only a distant memory, happily shredding the codices of the *Partidas* in order to use the strips of parchment and paper for humbler purposes, in particular as padding for book bindings. It is perhaps surprising that in Castile there appears to have been less of this sort of vandalism, to judge by the relatively small number of fragments vis-à-vis the large number of manuscripts preserved in their entirety, that is, those that contain at least one complete *partida*. After the first printed edition appeared in 1491, and especially after an officially sanctioned text came out in 1555, the manuscripts preserved no practical value whatsoever.

In Portugal José de Azevedo Ferreira has long been a most assiduous investigator and editor of the Alfonsine legislative heritage. In his 1980 edition of MS Fondo Antigo no. 2, Arquivo Nacional da Torre do Tombo, Lisbon (first *partida*, in Portuguese),⁷ he called attention to the existence of numerous fragments of the first *partida* and published one that was previously unknown: Doc. no. 1, Colegiada de Santa Iria, Arquivo Nacional da Torre do Tombo, containing I.xviii.21–xix.0–2; xx.5–8 (numbered xix.21–xx.0–2; xxii.5–8 in the fragment).⁸

In the same year Ferreira also published transcriptions and analyses of fragments of the third *partida*.⁹ One group was known, those now housed in the Biblioteca Geral da Universidade do Minho, Braga (III.xvi.36–40; xxvii.2–6),¹⁰ but the other group was yet another of Ferreira's discoveries, having been found among the personal effects of Dr. Silva Marques, former director of the Torre do Tombo (III.v.17–21; vii.8–11). An edition of another snippet of the third *partida* (Arquivo Paroquial de São João do Souto, Braga: III.xviii.59–70) appeared in 1985, while two more fragments, this time of the second *partida*, saw the light of day in 1987.¹¹ Again, one was known and even published (Arquivo Nacional da Torre do Tombo, no. 2, gaveta 7, maço 15: II.xx.3–4; xxi.10–11),¹² while the other is new (Biblioteca Pública, Braga: II.xxvi.10–18). In 1993–94 the same careful treatment was accorded a group of recently re-discovered portions of the third *partida* (Arquivo Distrital, Braga: III.viii.7–8, ix.1–2; x.1–2; Arthur Askins kindly provided the current shelf numbers, "Fragmentos, Pasta 4, nos. 235 e 236").¹³ We can expect that further fragments will continue to turn up; in

6. Craddock, *Legislative Works*, 41, no. Ah2; García y García, "Tradición" (1986): 671, no. 3. Aquilino Iglesia Ferreirós, "Una traducción catalana de la segunda *Partida*," *Anuario de estudios medievales* 17 (1987): 265–78.

7. José de Azevedo Ferreira, ed., *Primeira partida: edição et étude* (Braga: Instituto Nacional de Investigação Científica, 1980); see Craddock, *Legislative Works*, 46, no. Ah38; García y García, "Tradición" (1986): 684–85, no. 54. For further comments, see below in the section on editions.

8. Ferreira, *Primeira partida*, lvi–lxi; see García y García, "Tradición" (1986): 685–86, no. 5.

9. José de Azevedo Ferreira, "Dois fragmentos da *Terceira partida* de Afonso X," *Cahiers de linguistique hispanique médiévale* 5 (1980): 101–41.

10. Craddock, *Legislative Works*, 40, no. Ah4; García y García, "Tradición" (1986): 672, no. 6.

11. José de Azevedo Ferreira, "Un nouveau fragment de la *Terceira partida* d'Alphonse X," in *Mélanges de linguistique dédiés à la mémoire de Petar Skok* (Zagreb: Académie Yougoslave des Sciences et des Arts, 1985), 45–64; cf. García y García, "Tradición" (1986): 695, no. 94; Ferreira, "Dois fragmentos da *Segunda partida* de Afonso X," *Arquivos do Centro cultural português* 23 (1987): 271–301.

12. Craddock, *Legislative Works*, 46, no. Ah37; 79, no. Bh47.

13. José de Azevedo Ferreira, "Fragmentos das *Partidas* de Afonso X reencontrados em Braga," *Cahiers de linguistique hispanique médiévale* 18–19 (1993–94): 367–402.

1994 Aida Fernanda Dias published fragments of the second (xii.5–9; xviii.21–26; xxi.17–22) and seventh (xiv.8–10) *partidas*.¹⁴

Professor Dias has joined forces with an extremely active group of California Lusitanianists, Arthur L.-F. Askins, Harvey Sharrer, and Martha Schaffer; together with Gemma Avenzoa of the Universidad Central de Barcelona they have numerous discoveries to their credit. Avenzoa has a very useful survey of all presently identified Galician fragments along with an edition of one of them (IV.xxvii.1–6).¹⁵ All seven *partidas* are represented, sometimes in more than one version.

All available bibliographical and codicological data concerning manuscripts, fragments, and early editions of the *Partidas* have been incorporated into *Philobiblon*, a biobibliographical database for the study of medieval Catalan, Portuguese, and Spanish literatures. Texts in all fields of knowledge written before 1500 are catalogued, with the sole exception of notarial documents. In addition to information on primary source materials, there is also a biographical database of persons connected in any way with the production of the works catalogued, including authors, translators, scribes, owners of manuscripts, and printers, as well as a database of secondary literature.¹⁶

EDITIONS

According to Charles Sumner Lobingier's Introduction to Samuel Parsons Scott's 1931 translation of the *Partidas*, the basis for the translation was the edition published in Barcelona, 1843–44, by Ignacio Sanpontos y Barba, Ramón Martí de Eixalá, and José Ferrer y Subirana.¹⁷ Like all other nineteenth-century editions with the exception of that prepared by the Real Academia de la Historia, Madrid, in 1807, Scott's base text perpetuated that of Gregorio López, first published with an extensive Latin gloss in 1555.¹⁸ The editors of the Barcelona edition innovated by translating López's glosses into Spanish, but their version is less helpful than one might imagine, since the translator(s) made no effort to resolve the multitudinous abbreviated references to canon and civil law codes and to the legal literature of López's time. In any case, it appears that Scott and his annotator Lobingier made little if any use of the gloss. There exists an uncommonly handsome three-volume reprint of the 1555 edition, issued under the auspices of the Boletín Oficial del Estado in 1974 with an informative "Nota del editor" at the end of the third volume.¹⁹ Antonio Rumeu de Armas published a major biobibliographical article on López in 1993–94.²⁰

The *editio princeps* of the *Partidas* published by Meynardo Ungut and Lançalao

14. Aida Fernanda Dias, "As *Partidas* de Afonso X: novos fragmentos em língua portuguesa," *Revista portuguesa de filologia* 20 (1994): 91–124.

15. Gemma Avenzoa, "Atopáronse uns pergamiños . . . O redescubrimento duns fragmentos en galego das *Partidas*," *Romance Philology* 49 (1999): 119–29; Craddock, *Legislative Works*, 78, no. Bh43.

16. *Philobiblon* is distributed with the second *ADMYTE* (*Archivo digital de manuscritos y textos españoles*) CD-ROM, paradoxically labeled "0." *ADMYTE*, vol. 0, CD-ROM with manual (Madrid: Micronet, S.A., 1994). For more about *ADMYTE*, see below. A much revised and expanded version now is *Photobiblon: Electronic Bibliographies of Medieval Catalan, Galician, Portuguese, and Spanish Texts*, CD-ROM with manual (Berkeley: Bancroft Library, University of California, 1999).

17. Charles Sumner Lobingier, Introduction to *Las Siete Partidas*, trans. Samuel Parsons Scott (Chicago: Commerce Clearing House, 1931), xlix; Ignacio Sanpontos y Barba, Ramón Martí de Eixalá, and José Ferrer y Subirana, *Las "Siete partidas" del sabio rey don Alfonso el IX [=X]*, 4 vols. (Barcelona: A. Bergnes, 1843–44); see Craddock, *Legislative Works*, 75–76, no. Bh22.

18. *Las Siete partidas del sabio rey Don Alonso el nono [=X], nuevamente glosadas por el licenciado Gregorio López*, 7 vols. in 4 (Salamanca: Andrea de Portonariis, 1555; facsimile reprint Madrid: Boletín Oficial del Estado, 1974); Craddock, *Legislative Works*, 72, no. Bh7.

19. López, *Las Siete partidas*; Craddock, *Legislative Works*, 92, no. C33.

20. Antonio Rumeu de Armas, "El jurista Gregorio López, alcalde mayor de Guadalupe, consejero de Indias y editor de las *Partidas*," *Anuario de historia del derecho español* 63–64 (1993–94): 345–49.

Polono on 25 October 1491²¹ appears both in digitized facsimile and in paleographic transcription in the first CD-ROM produced by the *ADYMTTE* project in 1992.²² Cynthia Wasnick carried out the transcription of an exemplar belonging to the Biblioteca Nacional, Madrid (I-1389), while Rolando Cossio and Vicens Colmer are authors of the "Presentation," which provides a brief account of Alfonso's legislation, the career of the editor Alonso Díaz de Montalvo, and some bibliographical notes about the edition.²³ It is difficult to conceive of a more useful format for all manner of juridical, historical, and philological research; particularly important for the philologist is the marvelous ease with which one can confront instantly any reading of the transcription with the corresponding text of the facsimile.

Gonzalo Martínez Díez supervised the 1989 publication of a facsimile of this same edition, based on two copies, one belonging to Archivo de la Santa Iglesia Catedral de Segovia and the other to the library of El Escorial.²⁴ The edition is accompanied by an introductory pamphlet by Martínez Díez. According to Aquilino Iglesia Ferreirós, the result is somewhat factitious; in other words, it represents an amalgam of the two copies.²⁵

The Hispanic Seminary of Medieval Studies, Madison, Wisconsin, has reproduced the Real Academia 1807 text in microfiche with an extremely useful concordance.²⁶

The inventory of manuscripts of the *Partidas* is so huge that it has on occasion seemed useful to edit individual codices. One effort is that of Aurora Juárez Blanquer and Antonio Rubio Flores, which provides a transcription of the second *partida* contained in MS 12794, Biblioteca Nacional, Madrid,²⁷ which was used as the basis for the Real Academia 1807 edition. Six studies on various aspects of the legislation contained in the second *partida* have been appended. The introduction summarizes briefly the history of Alfonsine legislation and lists the editorial criteria in conventional form. The work concludes with a glossary of words that Alfonso was at some pains to define carefully; his definitions are cited in toto. In the introduction the editors appear blissfully ignorant of almost all that has been published in the last thirty years on the subject of Alfonso's legislative works, but it is useful to have convenient access to the text of such an important codex.

Francisco Ramos Bossini's 1984 edition of the Hispanic Society MS HC 397/573 (first *partida*)²⁸ is hardly worth mentioning, a shame because that manuscript betrays a special textual relationship with the *Setenario*, as I made evident in my 1992 article "Los pecados veniales en las *Partidas* y en el *Setenario*."²⁹ A detailed comparative

21. *Las Siete partidas de Alfonso X el Sabio*, ed. Alonzo Díaz de Montalvo, 2 vols. (Seville: Meynardo Ungut and Lançalao Polono, 25 October 1491); Craddock, *Legislative Works*, 70, no. Bh1.

22. *ADYMTTE*, vol. 1, CD-ROM with manual (Madrid: Micronet, S.A., 1992).

23. The bibliographical notes would have benefited from consultation with Craddock, *Legislative Works*.

24. Gonzalo Martínez Díez, ed., *Siete partidas*, facsimile ed. (Valladolid: Lex Nova, 1989).

25. Aquilino Iglesia Ferreirós, "De re historica (II)," *Anuario de historia del derecho español* 61 (1991): 625–26.

26. Jerry R. Craddock, John J. Nitti, and Juan C. Temprano, eds., *The Text and Concordance of "Las Siete Partidas de Alfonso X" Based on the Edition of the Real Academia de la Historia, 1807*, microfiches with introductory pamphlet (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1990); Craddock, *Legislative Works*, 74–75, no. Bh17.

27. Aurora Juárez Blanquer and Antonio Rubio Flores, eds., *Partida segunda de Alfonso X el Sabio: manuscrito 12794 de la B.N.* (Granada: Impredisur, 1992); Craddock, *Legislative Works*, 51, no. Ah54; García y García, "Tradicción" (1986): 689–90, no. 72.

28. Francisco Ramos Bossini, ed., *Primera partida (MS HC 397/573)*, *Hispanic Society of America*, ed. Francisco Ramos Bossini (Granada: Caja General de Ahorros y Monte de Piedad de Granada, 1984); Craddock, *Legislative Works*, 56, no. Ah60; García y García, "Tradicción" (1986): 692, no. 80.

29. Jerry R. Craddock, "Los pecados veniales en las *Partidas* y en el *Setenario*: dos versiones de Graciano, Decretum D. 25 c.3," *Glossae: Revista de historia del derecho europeo* 3 (1992): 103–16. See the brief and justly severe review of Ramos Bossini's edition by Aquilino Iglesia Ferreirós in *Anuario de historia del derecho español* 55 (1985): 953.

analysis of this manuscript together with a competent transcription is one of the most urgent desiderata in the field.

José de Azevedo Ferreira's contributions have been mentioned above in the section on manuscripts. His 1980 edition of the Portuguese first *partida* represents a major contribution.³⁰ The introduction assesses the impact of Alfonsine legislation in Portugal and provides a thorough study of the manuscript being edited. Ferreira went so far as to survey and compare the Castilian manuscripts of the first *partida*, noting as well the existence of numerous Galician and Portuguese fragments, including one published in the selfsame edition, which he felt presents a better text than that of the manuscript. A chapter is devoted to the mission of José Cornide of the Real Academia de la Historia, Madrid, to obtain copies of Portuguese manuscripts of the *Partidas* for the preparation of the 1807 edition.

An anthology of the *Partidas* in modernized Spanish, edited by Francisco López Estrada and María Teresa López García-Berdoy, appeared in the *Odres Nuevos* series in 1992.³¹ The introduction provides an excellent presentation of the subject for non-specialists, while historians of law might consult it with profit in order to appreciate more fully the strictly literary qualities of Alfonso X's great code. The selection of texts seems to have been done with care and with an eye to what might most interest modern readers. The language of the texts gives me pause; it has not been genuinely modernized, rather only refinished with a veneer of modern Spanish morphology and phonology. The result is often quite odd, and one cannot help wondering whether readers able to understand the modernization wouldn't be perfectly capable of understanding the original, if appropriately annotated.³²

Alfonso X's first attempt at a general law code, known as the *Espéculo*, is so intimately connected to the *Partidas* that it is appropriate to mention here Robert A. MacDonald's monumental 1990 edition; the text with concordance is also available on microfiche (1989).³³ Every aspect of the *Espéculo* is studied with scrupulous care, from the most narrow paleographic details of the base manuscript (MS 10123, Biblioteca Nacional, Madrid) to the broadest implications of Alfonsine legislation.³⁴ My only complaint about the edition itself is that many of the abundant marginalia in the manuscript were incorporated into the main text with no indication to the reader that such was the case. However, the microfiche transcription, because it is paleographical in the Madison tradition, rigorously brackets all marginal material.

Gonzalo Martínez Díez and José Manuel Ruiz Asencio published an edition of the *Espéculo* in 1985;³⁵ since the views there of Alfonsine legislation, and indeed of the constitution of the text being edited, are much at variance with MacDonald's, the introduction must still be consulted, though the text of the edition has been superseded. Both editions were subjected to detailed criticism by Iglesia Ferreirós.³⁶

30. Ferreira, *Primeyra partida*. For Ferreira's work on *partida* fragments since 1980, see above.

31. Francisco López Estrada and María Teresa López García-Berdoy, eds., *Las Siete Partidas: antología*, *Odres Nuevos* (Madrid: Castalia, 1992).

32. See my review of López Estrada and López García-Berdoy's 1992 edition in *La Corónica* 22, 2 (1994): 138–47.

33. *Espéculo: texto jurídico atribuido al rey de Castilla Don Alfonso el Sabio*, ed. Robert A. MacDonald (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1990); and *Text and Concordance of Espéculo, Alfonso X, el Sabio, MS 10123, Biblioteca Nacional de Madrid*, microfiches with introductory pamphlet (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1989).

34. Craddock, *Legislative Works*, 25, no. Aa3.

35. *Espéculo*, ed. Gonzalo Martínez Díez and José Manuel Ruiz Asencio, *Leyes de Alfonso X*, edición análisis crítico, vol. 1 (Avila: Fundación Sánchez Albornoz, 1985).

36. Aquilino Iglesia Ferreirós, "De re historica," *Anuario de historia del derecho español* 57 (1987): 853–80 on Martínez Díez; and "De re historica (II)," 626–706 on MacDonald.

STUDIES

The essays by Father Burns and Professor O'Callaghan that accompany this edition provide just about all that one need know about the structure and contents as well as the juridical background of the *Partidas*, with ample bibliographical references. Consequently, I will limit myself in this section to studies that have special importance for the chronology, sources, and transmission of the text.

The textual history of the *Partidas* involves four different works, which in my view constitute so many stages of the text: first the *Espéculo* (1255), then the *Libro del fuero de las leyes* (overtly dated 24 June 1256/29 August 1265), the *Partidas* itself (after 1272), and, finally, the *Setenario* (before Alfonso X's death, 4 April 1284). All this is spelled out in my earlier writings.³⁷ This is not to say that my account has won general favor; MacDonald offers another view, more in line with scholarly traditions of long standing, for example the introduction to his edition of the *Espéculo* and the account of the evolution of the *Partidas* in his edition of Alfonso's rules on gambling, the *Libro de las tahurerías*.³⁸

In Spain, two scholars in particular have made outstanding progress in refining our understanding of the development of Alfonsine legislation, to wit, Aquilino Iglesia Ferreirós, Universidad Central de Barcelona, and Antonio Pérez Martín, Universidad de Murcia; most of their publications on that subject present important considerations for the textual critic.

Iglesia Ferreirós's major statement in 1986, conceived as an extended commentary on Alfonso García Gallo's epoch-making "El Libro de las leyes" (1951–52), contains three parts, the first devoted to Iglesia Ferreirós's overall view of Alfonsine legislation, the second and third to his critique of García Gallo.³⁹ The first is by far the most important: the description and documentation of Alfonso's tripartite legislative program—the establishment of exclusive royal prerogative in all matters legislative, the legislative unification of his realms, and the introduction of new legislation. Based on a close reading of crucial texts from the *Fuero real*, the *Espéculo*, and the *Partidas*, these constitute, in my view, the finest overall account now available. A long passage (409–57) is devoted to a brilliant and compelling demonstration that the *Espéculo* was probably never completed. The other two portions of this book-length *ponencia* are somewhat less vital, since skepticism about and outright rejection of García Gallo's chronology of Alfonso's legislative works are now quite widespread. The final section, defending the fundamental probity of Gregorio López's (1555) and the Real Academia de la Historia's (1807) editions, adduces considerable documentation of value.⁴⁰ Those interested in the history of Alfonsine legislation in general, and in the *Partidas* in particular, will also wish to consult two articles—Iglesia Ferreirós's "Alfonso X, su

37. Jerry R. Craddock, "How Many *Partidas* in the *Siete Partidas*," in *Hispanic Studies in Honor of Alan D. Deyermond: A North American Tribute*, ed. John S. Miletich (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1986); "El *Setenario*: última e inconclusa refundición alfonsina de la primera partida," *Anuario de historia del derecho español* 56 (1986): 441–66; "Los pecados veniales en las *Partidas* y en el *Setenario*," "El texto del *Espéculo*," *Initium* 3 (1998): 221–74.

38. See Robert A. MacDonald, "Law and Politics: Alfonso's Program of Political Reform," in *The Worlds of Alfonso the Learned and James the Conqueror*, ed. Robert I. Burns, S.J. (Princeton, N.J.: Princeton University Press, 1985); "El *Espéculo* atribuido a Alfonso X, su edición y problemas que plantea," in Pérez Martín, *España y Europa*, 636–44; the introduction to his 1990 edition of *Espéculo*; and his edition of the *Libro de las tahurerías* (Madison, Wis.: Hispanic Seminary of Medieval Studies, 1995), 22–23.

39. Aquilino Iglesia Ferreirós, "La labor legislativa de Alfonso X el Sabio" in Pérez Martín, *España y Europa*, 275–599; Alfonso García Gallo, "El Libro de las leyes de Alfonso el Sabio: del *Espéculo* a las *Partidas*," *Anuario de historia del derecho español* 21–22 (1951–52): 345–528; cf. Craddock, *Legislative Works*, 141, no. C274.

40. See the review by Carlos Petit in *Anuario de historia del derecho español* 56 (1986): 1087–91.

labor legislativa y los historiadores" and "Cuestiones alfonsinas"; the latter attacks García Gallo's 1984 attempt to salvage his Alfonsine legislative chronology.⁴¹

Antonio Pérez Martín's chief contribution is his 1992 "La obra legislativa alfonsina y puesto que en ella ocupan las *Siete Partidas*."⁴² His point of departure is the thirteenth-century jurist Jacobo de las Leyes, the one figure known with certainty to have collaborated in the composition of the *Partidas*; his career and juridical contributions are spelled out in detail. Then Pérez Martín reviews the major legislative works of the Learned King, beginning a bit avant la lettre with the *Libro de los doze sabios*,⁴³ compiled during the reign of Alfonso X's father, Fernando III (1217–52), on the grounds that it contains numerous analogies with the *Setenario*, the *Fuero real*, and the *Partidas*. With regard to the last mentioned, after a swift rundown of its contents Pérez Martín provides a handy bibliographic catalog of possible and verified sources, followed by detailed observations on authorship, date(s) and place(s) of composition, textual transmission, editions, and the force of law (*vigencia*) that the *Partidas* has possessed since the thirteenth century.⁴⁴ This article, and indeed the entire issue of *Glossae* in which it appears are devoted to source studies, as part of a project supported by the Dirección General de Investigación Científica y Técnica.

The seventh centenary of Alfonso's death (1284–1984) was commemorated by a large number of conferences and publications. While many offered contributions of great interest on various Alfonsine topics, most of them involved summing-up or state-of-the-art assessments that broke little new ground with regard to the chronology, sources, and textual tradition of the *Partidas*. The chief exception was the 1986 volume *España y Europa*, edited by Pérez Martín. The quality of the articles was also particularly high in the special issue of the *Revista de la Facultad de Derecho de la Universidad Complutense*, "Alfonso X el Sabio: VII Centenario," which contains as well a useful, if unannotated, bibliography of Alfonso X's legislative works.⁴⁵

The great outpouring of material occasioned by the seventh centenary has abated, but substantial pieces continue to appear on a regular basis in academic journals. We are very much in need of a systematic periodical survey of works on Alfonsine legislation, such as was provided for several years by the *Noticiero alfonsí*, a bibliographical newsletter on all aspects of Alfonso X's life, times, and works, edited by Anthony Cárdenas.⁴⁶

Some time ago Professor Cárdenas kindly sent me a thick packet of photocopies of articles dealing with the impact of the *Partidas* on United States jurisprudence, including an unpublished essay of his own.⁴⁷ since this is a subject that might well have special interest for those who consult the *Partidas* in Scott's translation, I conclude my bibliographic survey on this note. In his paper just mentioned, Cárdenas

41. Aquilino Iglesia Ferreirós, "Alfonso X, su labor legislativa y los historiadores," *História, instituciones, documentos* 10 (1982): 9–112; and "Cuestiones alfonsinas," *Anuario de historia del derecho español* 55 (1985): 95–149; Alfonso García Gallo, "La obra legislativa de Alfonso X: hechos e hipótesis," *Anuario de historia del derecho español* 54 (1984): 97–161.

42. Antonio Pérez Martín, "La obra legislativa alfonsina y puesto que en ella ocupan las *Siete Partidas*," *Glossae: Revista de historia del derecho Europeo* 3 (1992): 9–63, a revised and much expanded version of his "Murcia y la obra legislativa alfonsina: pasado y presente," *Anales de derecho* 8 (1985): 93–128.

43. John K. Walsh, ed., *El libro de los doze sabios o tratado de la nobleza y lealtad [ca. 1237]: Estudio y edición, Boletín de la Real Academia Española* 29 (1975).

44. Pérez Martín, "La obra legislativa alfonsina," 37–42.

45. Luis María García-Badell Arias, "Bibliografía sobre la obra jurídica de Alfonso X el Sabio y su época," *Revista de la Facultad de Derecho de la Universidad Complutense* 9 (1985): 287–319.

46. Anthony J. Cárdenas, ed., *Noticiero alfonsí*, vols. 1–7, mimeographed newsletter, 1982–88.

47. Anthony J. Cárdenas, "La tierra en los Estados Unidos y el derecho español: el nexo colombino," revised version of "La tierra, el derecho y Colón," presented 13 October 1988 at the Homenaje de la Universidad Norteamericana el Quinto Centenario conference.

provides an overview of the presence of Spanish legislation, both in statutes and in actual legal proceedings, with special reference to the *Partidas*, in particular with regard to commercial law, community property, water rights, and land grants. Two articles by James M. McCaffery in 1989 and 1994 attest to the continuing interest on both sides of the Atlantic in the Hispanic legal tradition in the state of Louisiana.⁴⁸ For the rest, Eelco van Kleffens's rather uneven 1968 monograph, *Hispanic Law Until the End of the Middle Ages*, remains a useful guide to the literature on this theme.⁴⁹ And see above, Burns's section on "Alfonso and the Wild West: The *Partidas* on the U.S. Frontier."

48. James M. McCaffery, "Las Siete Partidas en la jurisprudencia del estado norteamericano de Luisiana," *Revista de derecho privado* 73 (1989): 938–44; and "Curia phillipica, piedra angular de la ley española en Luisiana," 78 (1994): 433–38.

49. Eelco Nicolaas van Kleffens, *Hispanic Law Until the End of the Middle Ages, with a Note on the Continued Validity After the Fifteenth Century of Medieval Hispanic Legislation in Spain, the Americas, Asia, and Africa* (Chicago: Aldine, 1968); cf. Craddock, *Legislative Works*, 216–17, no. C670.

PARTIDA I

INTRODUCTION TO THE FIRST PARTIDA

Alfonso's code recognized both divine law (Christian revelation) and medieval natural law (the conclusions of reason reflecting on basic realities), but more immediately it incorporated the canon or ecclesiastical law common to western Christendom.¹ Canon law affects Alfonso's code throughout, but it constitutes the substance of the first *partida*. It does not function there as an extrinsic addition, something outside the realm's real law code, a piety perhaps or an acknowledgment of the practical force of church beliefs and institutions. True, canon law was taught as a distinct branch at medieval universities, though budding jurists co-studied it as intensively as its twin civil law. And it enjoyed its own international court system as well as its own massive depository of legal documentation and literature, and its own processes and institutions for creating law. Canon law applied to both genders and all classes. Its substance was not the positive law of a vanished Rome but church legislation that borrowed from Justinian and also cross-fertilized the work of civil Roman lawyers. One of its best historians today speaks of the two as "parallel" systems, "interdependent" with "a close symbiotic relationship," and "highly permeable" boundaries. Canon law affected much that moderns assume to be secular; it was "all pervasive" and "reached into virtually every nook and cranny of human conduct, both public and private."²

In his essay "Royal Law and Canon Law" Harold Berman notes some similarities and connections between the two systems. Royal law throughout Europe by Alfonso's time "bore a structural resemblance to the system of canon law," the two systems so complementing each other as "to have constituted integral parts of a single legal order." Each had also a "limited competence and limited jurisdiction," overlapping at times but coexisting. Both systems were grounded in objective external sources, including divine law, natural law, statute texts, and residual custom, with a procedure grounded in "interrogation under oath." Both laws were the product of

1. Bibliographical orientation on "the church," in its traditional or wider understanding, is far too large a task for a footnote. A good beginning, as background to the church of the *Partidas*, would be Colin Morris, *The Papal Monarchy: The Western Church from 1050 to 1250* (Oxford: Clarendon Press, 1989). On inner religious life after the dynamic impetus of the Fourth Lateran Council, and the interrelation of institution, community, and individual, see R. N. Swanson, *Religion and Devotion in Europe, c. 1215–c. 1515* (Cambridge: Cambridge University Press, 1995). From a legal vantage see Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum* (Berkeley and Los Angeles: University of California Press, 1972). For the Spanish medieval church, we have the ample if uneven *Historia de la iglesia en España*, ed. Ricardo García-Villoslada, in the Biblioteca de Autores Cristianos, a multiauthor general history in 5 volumes (Madrid: Edica, 1979); see vol. 2, itself two large volumes, for the post-Visigoth and pre-fifteenth century, with ample bibliographies. See also Peter Linehan, *The Spanish Church and the Papacy in the Thirteenth Century* (Cambridge: Cambridge University Press, 1971) and Demetrio Mansilla, *Iglesia castellano-leonesa y curia romana en los tiempos del rey San Fernando* (Madrid: Consejo Superior de Investigaciones Científicas, 1945). A thorough and detailed archival history of a thirteenth-century Spanish diocese is Burns, *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*, 2 vols. (Cambridge, Mass.: Harvard University Press, 1967). Oxford University Press has announced a work in preparation by Derek Lomax, *The Church in Medieval Spain*, for its series Oxford History of the Christian Church.

2. James Brundage, *Medieval Canon Law* (New York: Longman, 1995), 96, 111, 175–76. This is the best and most recent introduction to the subject, with a survey of standard and current bibliography as well as an appendix of short biographies of noted medieval canonists. The series A History of Medieval Canon Law by the Catholic University of America Press under Wilfried Hartmann and Kenneth Pennington as general editors has produced the first two of eleven projected volumes. See also Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), part 1 on canon law; Burns, "Canon Law and the Reconquista: Convergence and Symbiosis in the Kingdom of Valencia Under Jaume the Conqueror," *Proceedings of the Fifth International Congress of Medieval Canon Law* (Città del Vaticano: Biblioteca Apostolica Vaticana, 1980), 387–424; and the some hundred biographies constituting J. A. Clarence Smith's *Medieval Law Teachers and Writers, Civilian and Canonist* (Ottawa: University of Ottawa Press, 1975).

conscious systematization, canon law more so than royal or classic Roman law. Both royal and canon were characterized by "conscious growth over generations," an ongoing phenomenon by means of legislation, adjudication, and legal scholarship. And finally the two assumed that all law followed guiding purposes: a process of making and applying rules with the clear aim of realizing justice.³

THE KING'S CANON LAW

Alfonso and other rulers each inhabited a unitary state, whose primary concern was the intertwined religious and civic good of its subjects. While respecting the distinct nature of the ecclesiastical legal system and laws, a ruler retained both an extrinsic role as promoter, protector, and beneficiary of that system and also an intrinsic role as lay cooperator in interpreting and applying church law in his own realms. His role was not only obediential, as being himself under canon law, but also confrontational in defending privileges and antecedents or in applying the general principles of law and the interpretive circumstances of a given situation. It was for this active and sometimes passionate participation that Alfonso's contemporary King James of Aragon⁴ always took canon law decretalists in his traveling court. For a major lawsuit, such as the struggle between James and Alfonso for control of the Valencian church that was set up in the wake of the Reconquest, each king could draft or import additional lawyers and work more or less behind the scenes to manipulate the ecclesiastical court.⁵ Each king also kept jurist-procurators on retainer at the papal court.

Of the staff involved in confecting the *Siete Partidas* under the watchful eye of King Alfonso, two names deserve particular notice. The Italian Giacomo or Jacobo de' Giunti "de las Leyes," doctor of the two laws and "judge of the king" in Castile, was elaborately rewarded by his patron King Alfonso from the recently conquered region of Murcia and by King James of Arago-Catalonia from the recently conquered region of Valencia. Some scholars argue for a consultative role for Jacobo in the *Siete Partidas*.⁶ Other candidates will appear below in a section on authors and sources. For the first *partida* the Catalan Dominican Ramon de Penyafort is often cited as a probable major influence or even as an author. Ramon was the preeminent canonist of his day, commissioned to compile in 1234 the enduring *Decretales* of Pope Gregory IX, and a man active in the papal reform in Spain and in many legal situations there. The kings of both Castile and Aragon attended his funeral. His *Decretales* had an obvious role in the first *partida* and to a lesser extent elsewhere in the code, through the personal activity some posit remains to be textually traced. Jerry Craddock sees Penyafort's *Summa de casibus paenitentiae* as a main source for the first *partida*. Penyafort's "direct participation in the compilation" of the *Partidas* Craddock finds "a reasonable, but unsubstantiated, conjecture."⁷

3. Berman, *Law and Revolution*, 516–19.

4. See my comments in the General Introduction to this edition.

5. The lawsuit is reconstructed at length in Burns, *Crusader Kingdom*, 1: chap. 14. See also the Introduction to vol. 3 of this edition.

6. On Jacobo see Burns, "Canon Law and the Reconquista," including King James's gift to him of Favarella in Valencia; and the standard works in Jerry R. Craddock's *The Legislative Works of Alfonso X, el Sabio*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986), nos. C242 and C659 on his participation in the *Partidas*. See p. xxxvii, note 55.

7. Laureano Robles has gathered all the manuscript, edition, and study materials on the works of Penyafort to 1971 in *Escritores dominicos de la Corona de Aragón (siglos XIII–XV)*, in the *Repertorio de historia de la ciencias eclesiásticas en España*, 5 vols., Corpus Scriptorum Sacrorum Hispaniae, estudios 1–5 (Salamanca: Instituto de Historia de la Teología

LATERAN COUNCIL IV

Central to the whole first *partida* was the “Great Council” of Christendom held at Rome just six years before Alfonso’s birth. This twelfth ecumenical council, called Lateran IV, was a parliament of Europe convoked by the canonist-pope Innocent III to reform Christendom and to prepare the Fifth Crusade. It gathered 71 prelates of the church, 412 bishops from England to Poland to Antioch and Alexandria, over 800 abbots and priors, legates from the Holy Roman Empire and the Latin empire of Constantinople, and delegations from the kings of England, France, Hungary, the Realms of Arago-Catalonia, Sicily, Cyprus, and Jerusalem, as well as delegates from cities, princes, and magnates. Among its activities it ratified seventy canons on belief and practice presented by the pope.⁸ Ramon de Penyafort was active at the council and its subsequent promotion in the Iberian Peninsula. It was therefore natural for Alfonso’s expert jurists to incorporate most of this newly systematized and “legalized” material directly into the first *partida*. Alfonso removes such contents into the vernacular Castilian, of course, expands or details or rewords as seems suitable, and adds elements, to meet the needs of a comprehensive Castilian or even imperial code. Alfonso’s version often expresses Spanish interests, privileges, and preoccupations. His coverage ranges in the first *partida* from essential common beliefs such as the Trinity and the sacraments to disputed or ambiguous practices such as episcopal elections and folkloric custom. Areas such as taxing the clergy would not lightly be surrendered by the king or even eroded.

FIRST *PARTIDA*: CONTENTS

The first *partida* presents 24 titles or general topics, divided into 517 laws or small essays, the whole taking up 266 dense pages in the present version. By way of prologue the first two titles, in thirty essays, explain the nature, necessity, and purpose of law; how and by whom laws are made, amended, interpreted, and enforced; and how custom differs and is established. A subsequent short title on the Trinity and Creed holds no surprises. The 73 essays in title 4 constitute a practical theology of the sacramental system so thoroughly expressed at the Lateran Council (though marriage is postponed to a more appropriate *partida*). No fewer than 25 essays cover the complexities of penance and confession. Topics thought cognate slip into the sacramental laws: the coronation anointing of kings on the shoulder instead of the head, public penitents staying in little huts in front of a church during Lent, devotional confession

Española, 1967–76), 3: 11–177; reprinted in book form Salamanca: Imp. Calatrava, 1972). The first fifty pages treat of Penyafort. The only reference to the *Siete Partidas* is to the obvious influence of his *Decretales*. José Giménez y Martínez de Carvajal has a law-by-law parallel of the *Decretum* and the *Decretales* with the *Siete Partidas* in his “El Decreto y las *Decretales*, fuentes de la primera *Partida* de Alfonso el Sabio,” *Anthologica annua* 2 (1954): 239–348 (reviewed by Craddock, *Legislative Works*, C307). Giménez also explores at length “San Raimundo de Peñafort y las *Partidas* de Alfonso el Sabio,” *Anthologica annua* 3 (1955): 201–338. Craddock (C309) praises this as “the single most significant study on the sources” of the *Partidas*, which “establishes beyond any reasonable doubt” that the “chief immediate source” of the first *partida* was Penyafort’s *Summa de casibus paenitentiae*. Cf. the work of J. Homer Herriott in Craddock’s no. C340. Raimondo Bidagor also argues for the main role of that *Summa* in the first and fourth *partidas* in “El derecho de las *Decretales* y las *Partidas* de Alfonso el Sabio de España,” *Congressus iuridici internationalis VII saeculo a Decretalibus Gregorii IX et XIV a codice iustiniano promulgatis*, 5 vols. (Rome: Libreria Institutii Utriusque Iuris, 1935–37), 3: 297–313. Cf. Craddock, nos. C109, C234. On the problems involved in arguing for a literal relationship between texts as against merely paralleling similar passages, see Craddock, no. C135.

8. Antonio García y García, ed., *Constitutiones concilii quarti lateranensis una cum commentariis glossatorum*, Monumenta Iuris Canonici, Corpus Glossatorum 2 (Città del Vaticano: Biblioteca Apostolica Vaticana, 1981). A convenient English translation is in Norman P. Tanner, ed., *Decrees of the Ecumenical Councils*, 2 vols. (London: Sheed and Ward, 1990). For comment and background see Raymonde Foreville, *Latran I, II, III, et Latran IV* (Paris: Editions de l’Orante, 1965).

to a layman, and other glimpses of popular piety and formulas. Many essays are less laws than extended catechetical instructions. Some incorporate brief histories, as in the different ways people have mourned the dead.

A confusion of church prelates and officials had evolved during the millennium before Alfonso, and this code offers a valuable tool for novice medievalists in disentangling them, from patriarchs and primates to archdeacons, subchanter, archpriests, legates, and provosts. Alfonso tells how to be a bishop, as he will later describe how to be a knight or a king, including personal behavior, amusements, and costume. Five essays cover as many kinds of priestly homicide. Disputed questions topical today are included, such as clerical celibacy and the question of women priests. The structure and elements of monastic consecrated life occupy 41 laws, covering mostly males. Excommunication, interdict, suspension, and anathema require no fewer than 30 such treatises to elucidate their complexities; sacrilege, like simony, has its own full title. Churches and their construction, including repair of parish churches, cemeteries, and burial (denied to usurers and tournament participants), and especially the intricacies of the right of asylum, all receive careful consideration.

More extended attention goes to such vital economic fields as benefices (19 essays), the tithe system (26), the allied first fruits for the parish (10 more), fees (19), lay patronage or control over church appointments (15), private property of priests (8), and alms (7). A closing treatise considers the special world of pilgrims. Hidden away within this larger architecture are small museums of medieval values and viewpoints. One of the 21 laws on simony, for example, describes the status of scholarship or higher learning. By common canonical consent, "it is a gift of God and therefore should not be sold" without risking damnation.⁹ Normally the scholar will have a church benefice to support his teaching; he may also receive voluntary donations; and where poverty threatens he can demand stipends from students, much as a priest receives mass-offerings. If tuition was simply simony, however, accepting bribery to give a fraudulent diploma to license a teacher was not simony but only "a great sin" with severe legal punishments. In her review of this *partida* as Alfonso's "vision of the church," Linda McMillin notes more than one hundred scriptural references, evenly divided from both testaments and representing a great variety of biblical books.¹⁰

CHURCH LAW VERSUS "RELIGION"

Obviously this *partida* does not cover medieval religion itself or even the medieval church in its full expression. Though it cites the Bible, it does not discuss it; there is no consideration of prayer, devotions, mysticism, or grace. Many sins actually appear only in later *partidas*, and only when they are also crimes: abortion, adultery, arson, bigamy, blasphemy, castration, counterfeiting, and on through the alphabet to such items as rape, robbery, sodomy, and violence. As Penyafort's fellow Dominican and cooperator Thomas Aquinas explains in his *Summa theologica*: "human law does not meddle with matters it cannot direct."¹¹ Major items such as oaths or the populations of Jews and Muslims within Christendom also turn up later in the *Partidas* in

9. *Siete Partidas*, I.xvii.10. This legal commonplace is usually seen in Latin: *scientia donum dei est, unde vendi non potest*.

10. Linda A. McMillin, "Alfonso el Sabio and the *Primera Partida*: A Thirteenth-Century Vision of the Church," *Comitatus* 17 (1986): 52–69, quote 58.

11. I–II.93.3 and 96.2.

other contexts. The genre of law, however delightfully expanded, still confines the subject matter of a code.

The first segment may seem to concentrate on the clerical world, the sacraments and basic creed it promulgated, and the more obvious confrontations with the lay population as in tithes, burial, liturgy, or penitential practice, marriage, and pilgrimage. The layman is present continuously however as subject, from the cradle to the grave. Alfonso himself defines the church in its larger meaning as “the entire body of true Christians who are to be found in the whole world.”¹² Understood in that larger sense, the church as visible was less an organization than a congeries of institutions and movements, some clerical and some lay, some lay with clerical status (nuns, students), some universal and some local, some episcopal and some papal, some transient and some permanent. The Roman law concept of corporation, perfected in this century, made many such institutions effectively autonomous. The analogous legal tool, exemption, could remove control of a diocese, monastery, or religious order from its usual place in a country. In the pseudo-unitary “institutional church,” many institutions such as confraternities, hospitals, or universities were effectively run by laymen.

Each of the great international orders, including the various mendicant, military, ransom, and hospital orders, had its own constitution, autonomy, integrity, and financial system. Whatever unity one might devise to simplify all such elements for the uninstructed, the reality was a complex, or rather a confusion, of patterns and institutions, each vibrantly self-motivated, around a mere skeleton of pope, bishops, and parish priests. In that litigious age, a diocese could be riven by factions, its bishop also maintaining lawsuits against neighboring archbishops and primate, quarreling with the cathedral canons, disputing the tithes with king and landlord, blocking the burial or liturgical privileges of new orders, and vigorously confronting his parish vicars.

This dynamism gave the medieval church many kinds of community within the larger international Christendom that defined the European. It gave the word “church” many sub-meanings foreign to our modern ear. It makes nonsense of a common modern division into institutional church and a church of free-flowing sanctity. Nor does it encourage another simple division proposed by some scholars—a religion of the bookish elites as against a religion of the masses. The crossover impact of sermons, devotions, confraternities, paraliturgical ritual, a common spiritual vocabulary on the basics, the many festivities, and the ubiquitous presence of friars and a crowd of clergy conspired to create a certain commonality.

Our secularized worldview privatizes the religious tropism universal among human societies. It multiplies denominations while marginalizing their churches. Only with effort does the modern reader come to understand King Alfonso’s integral, unitary world, entirely colored by religion and framed by a great variety of religious institutions. Alfonso was not a sacral king on the shamanistic model of England and France or the imperial cult at Constantinople, but his startlingly secular sovereignty retained a providential origin and role for himself and a lively dynamic vis-à-vis his bishops and the papacy. Alfonso the Learned saw himself as at once a subject of that religion and an independent religious sovereign endowed directly by God with transcendent responsibilities for his intertwined church and realms. He prepared his code with both these convictions in mind.¹³

12. *Siete Partidas*, I.x.1.

13. See the wording of Alfonso in his *Espéculo*, in Robert A. MacDonald, “Law and Politics: Alfonso’s Program of

SUGGESTIONS FOR READING

For a general bibliography on the *Partidas* see the "Bibliographical Notes" by Jerry Craddock in the General Introduction, supplemented by the "Codices and Editions" and "Sources" by Joseph O'Callaghan in his contribution there.

The present list applies to the first *partida* alone, combining materials from the notes with representative items for general background, in English where possible, keeping in mind the needs of both novices and the more advanced.

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- . "Un monasterio-hospital del siglo XIII: San Vicente de Valencia." *Anuario de estudios medievales* 4 (1967): 75–108.
- . "The Organization of a Medieval Cathedral Community: The Chapter of Valencia (1238–1280)." *Church History* 31 (1962): 14–23.
- . "The Parish as a Frontier Institution in Thirteenth-Century Valencia." *Speculum* 37 (1962): 244–51.
- . "Relic Vendors, Barefoot Friars, and Spanish Muslims: Reflections on Medieval Economic and Religious History." *Comparative Studies in Society and History* 24 (1982): 153–63.
- . "Renegades, Adventurers, and Sharp Businessmen: The Thirteenth-Century Spaniard in the Cause of Islam." *Catholic Historical Review* 57 (1972): 341–66.
- . "The Spiritual Life of James the Conqueror, King of Arago-Catalonia, 1208–1276: Portrait and Self-Portrait." *Catholic Historical Review* 62 (1976): 1–35.

Political Reform," in *The Worlds of Alfonso the Learned and James the Conqueror*, ed. Robert I. Burns, S.J. (Princeton, N.J.: Princeton University Press, 1985), 155, notes 7–10. See too Teófilo F. Ruiz, "Unsacred Monarchy: The Kings of Castile in the Late Middle Ages," in *Rites of Power: Symbolism, Ritual and Politics Since the Middle Ages*, ed. Sean Wilentz (Philadelphia: University of Pennsylvania Press, 1985), 109–44; Angel Ferrari Núñez, "La secularización de la teoría del estado en las *Partidas*," *Anuario de historia del derecho español* 11 (1934): 49–456. José Manuel Nieto Soria, "Principios teóricos y evolución de la política eclesiástica de Alfonso X," in *Homenaje a Álvaro Santamaría (= Mayurqa 22 [1989])*, 2 vols. (Palma de Mallorca: Universitat de les Illes Balears, 1989), 1: 465–74, discussing three fundamental principles of his policy, then a chronological evolution through four separate periods; Carlos de Ayala Martínez, "Las relaciones de Alfonso X con la Santa Sede durante el pontificado de Nicolás III (1277–1280)," in *Alfonso X el Sabio, vida, obra y época*, ed. Manuel González Jiménez et al. (Madrid: Sociedad Española de Estudios Medievales, 1989), 137–51; Joseph F. O'Callaghan, *The Learned King: The Reign of Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993), chap. 4, "The Church"; José Manuel Nieto Soria, *Iglesia y poder real en Castilla: el episcopado, 1250–1350* (Madrid: Universidad Complutense, 1988).

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HERE BEGINS
THE FIRST PARTIDA
WHICH TREATS OF ALL THE THINGS THAT RELATE TO THE
CATHOLIC FAITH, WHICH MAKES MAN KNOW
GOD THROUGH BELIEF.

TITLE I.

**Which Treats of the Laws, and for What Reasons and in What
Way This Book is Divided Into Titles.**

We make this book for the service of God and the common benefit of nations, as we have shown in its beginning. And we divide it into Seven Parts, in the manner which we have mentioned above, in order that those who read it may find therein all things complete and certain, in order to be able to profit by them. And we divide each Part into titles, which means the sum of the principles which are explained in it. And these principles, in which all matters are shown perfectly as they are and how they are to be understood, are called laws. But, because the Latin races give the name of laws to the religious beliefs which men have, and some persons may think that the laws of this book do not speak of anything else except that alone, for this reason we, to avoid this doubt, desire to make it understood what kind of laws these are, in what manner they are divided, and why they are so named. Also, what is their efficacy and their power, and from what sources they were derived and drawn; which of them relate to the belief of Our Lord Jesus Christ; which pertain to the government of nations; why they have the name of laws; of what nature they are in themselves; how they ought to be made, and in what respect they are of advantage; of what character the maker of them should be; who has power to make them; how they should be understood, and who can make them clear, and cause them to be interpreted, when any doubt exists in regard to them; in what way they should be obeyed; how they should be enforced; how judgment should be rendered by means of them; and in what way they should be combined with laws newly made; for what reasons men cannot excuse themselves from the judgment of laws by saying that they were ignorant of them; and who those are who are exempt from the penalty imposed by the laws, although they may not have known of them.

LAW I.

What Laws These Are.

These laws are ordinances to enable men to live well and regularly according to the pleasure of God, and also, as is proper, to live a good life in this world and to observe the religion of Our Lord Jesus Christ as it is. They also show how men should live with one another in right and justice, as is explained further on in the laws which treat of each of these matters. Such as especially relate to religious belief, according to the ordinances of the Holy Church, we have placed in the first Part of this book. The others, which treat of the government of nations, are set forth in the six Parts, which follow.

LAW II.

Of Natural Law and That of Nations.

Jus naturale, in Latin, means natural law in Castilian, the law which men and also other animals which have sense possess naturally in themselves. For by the action of this law, the male unites with the female, which union we call marriage, and by means of it men rear their children and all animals their young. Moreover, *jus gentium*, in Latin, means the common law of all nations, which is suitable for men and not for other animals; and this was established by reason as well as by force, because men could not live properly with one another, in concord and in peace, if all did not observe it.¹ For, by means of such a law every man knows what is his own, by it fields are divided and the limits of cities defined; and by it also men are required to praise God and to obey their fathers and mothers and the government of their country, which in Latin is called *patria*. Moreover, this law permits every one to defend himself against such as attempt to inflict dishonor or violence upon him: and, besides, gives him to understand that everything he does to protect himself from personal injury, with which he is threatened, he does under the law. And from the ordinances relating to these two things, and from these two kinds of law which we have mentioned above, and from other important sources of knowledge, we have collected and combined all the laws of this our book, according as we find them written in the works of the ancient sages, placing each law in its proper place according to the arrangement we have designed for them.

LAW III.

Of the Divisions of the Laws.

Although the laws may be the same so far as justice is concerned, with respect to reason, they are divided into two kinds, of which one is for the benefit of the soul and the other for the benefit of the body. That for the soul relates to belief, that for the body to a good life, and we shall state further on how each one of these should be made. By means of both of them the whole world is governed, for in them is to be found the reward of the good, each according to his desert, as well as the chastisement of the wicked. The division of benefits is of three kinds. First, that which relates to those of higher rank, as for instance lords, or parents, so that each one of them may have the right to do good to those who belong to him; parents to their children or other relatives, according to the nature of their relationship; lords to their vassals or others under their control, by reason of the service that they receive from them. The second division refers to such as are equal in rank, as is seen in betrothals and marriages; for doing good in this way should enure to the profit of him who does it, in two respects; first, because the performance of the act itself is good, second, because it redounds to his own honor and advantage. The third division relates to inferiors, as children, servants, vassals, slaves; for doing good under such circumstances is an evidence of great kindness in him who does it, and there result to him therefrom two benefits which are of very noble character, the one grandeur, the other power; but, as this division of benefits could not profit man if he should not fulfill his duty, for this reason a certain disposition is necessary, as to do good where, how, and when it is fitting, and besides to know how to repress evil and remove it, and

¹ These definitions of the natural and civil law are taken almost verbatim from the Institutes of Justinian.

"*Jus naturale est, quod natura omnia animalia docuit, nam ius istud non humani generis proprium est, sed omnium animalium . . . hinc descendit maris atque feminae coniugatio quam nos matrimonium appellamus; hinc liberorum procreatio et educatio, videmus etenim cetera quoque animalia istius iuris peritiam censeri.*"

"*Jus autem gentium omni humano generi commune est.*"

(Corp. Jur. Civ. Inst. I-1, 2.)—Ed.

punish it at such times and seasons as is necessary: observing all actions, of what nature they are, who commits them, and in what way, and in what places this is done. By means of these two things, the world is set in the right way, by doing good to those who do good and by giving punishment and warning to those who deserve it. And we, Don Alfonso, the King, seeing that in other books that treat of the law chastisement is inflicted for wrongs which are committed and no reward is given for good actions, for this reason we have considered it right to order that rewards as well as punishments be inserted in this book.

LAW IV.

Why the Laws Have This Name.

A law means something to be read, in which instruction is contained, and punishment set down, to bind and control the life of man, in order that he may not commit wrong, and to demonstrate and point out the good that he should do and practice; and, moreover, the law is so called because all its commands should be loyal, right, and perfect, according to God and justice.

LAW V.

What the Functions of the Laws Are.

The functions of the laws are of seven kinds. The first is to inspire confidence; the second to regulate matters; the third to command; the fourth to combine; the fifth to reward; the sixth to forbid; the seventh to punish. Whence it is proper that whoever desires to read the laws of this, our book, should reflect upon them very carefully, and should scrutinize them in such a way as to understand them: for if he should comprehend them thoroughly, he will observe all that we have said, and he will be benefited in two ways: first, he will become more learned, and second, he will obtain much profit from them. In like manner, as wise men have said, he who reads the Scriptures and does not understand them is like one who rejects them. And, moreover, such a person resembles one who dreams something and when he awakes does not find it true.

LAW VI.

From What Source These Laws Were Taken.

These laws have been drawn from two sources, first from the words of the saints who stated spiritually what was suitable for the excellence of man and the salvation of his soul: second, from the sayings of wise men who explained matters according to nature, that is for the direction of worldly actions, how they may be performed properly and according to reason. The union of these two classes of laws have such great virtue that they bring into perfect concord the body and the soul of man. For which reason he who knows them and understands them well is a perfect man, well informed of what is necessary for the profit of the soul and of the body.

LAW VII.

On the Laws Which Relate to the Belief of the Faith, and on Those Which Pertain to the Government of Nations.

The laws which treat of the Faith appertain to the religion of Our Lord Jesus Christ. For these unite man to God through love; for, having full belief in Him, by right it is proper that he love, honor, and fear Him, loving Him

through the goodness that is in Him, and besides on account of the good that He does to us. And He is to be honored for His great nobleness and for His great virtue, and is to be feared on account of His great power and His justice, and he who does this cannot fail to have the love of God in full measure. To the government of nations appertain the laws which unite the hearts of men through love, and this is right and reason; for, from these two things proceed perfect justice which causes men to live properly one with another. Those who live in this manner have no reason to hate each other but to like each other well. Wherefore laws which are just cause the good will of one man to be united to that of another by means of friendship.

LAW VIII.

What the Laws Should Be in Themselves.

Laws should be perfect in themselves, very carefully framed and examined, so that they may be reasonable and relate to things according to nature, and that their words may be good, simple, and clear, so that every man can understand and remember them. And, moreover, they should be without obscurity, and without nice points of ceremony, in order that a wrong construction may not be drawn from the law through its being imperfectly understood, by seeking to prove falsehood by means of truth, or truth by means of falsehood: and that the laws may not be antagonistic to one another.¹

LAW IX.

How Laws Should Be Made.

Laws should be made and completed as we have stated in the preceding chapter, and the principles set forth in them should also be drawn up with much care before they are communicated to the people. When they are drawn up in this manner they will be free from errors, proper for the service of God, to the praise and honor of the lord who commanded them to be made, and for the profit and welfare of those who are to be judged by them. Moreover, when they are drawn up, care should be taken that no dispute, nor anything else that may be a disturbance or a hindrance may arise, and that they are made with the advice of men who are wise, learned, loyal, and without avarice. For such men as these will know how to recognize what belongs to right and justice and is for the common advantage of all.

LAW X.

What Benefit Results From Laws.

Very great and wonderful is the benefit which laws confer upon men, for they enable them to acknowledge God, and acknowledging they will know how they should love and fear Him. Moreover, it teaches them to acknowledge their lords and superiors, and how to be obedient and loyal to them. They also show how men should love one another, each one seeking right for the other, taking care not to do to him what he would not wish to be done to himself. For, by observing these matters well they live justly in quiet and in peace, and each one profits by what belongs to him and takes pleasure in it, nations are enriched, the people multiply, the kingdom flourishes, wickedness is restrained, and prosperity increases; consequently the laws offer a course of life to a man so that it may be well with him in this world and in the next.

¹ "*Lex est dictamen rationis.*" "*Lex rejicit superflua, pugnantia, incongrua.*"

LAW XI.**What the Law-Maker Should Be.**

The law-maker should love God and keep Him before his eyes when he makes the laws, in order that they may be just and perfect. He should moreover love justice and the common benefit of all. He should be learned, in order to know how to distinguish right from wrong, and he should not be ashamed to change and amend his laws, whenever he thinks or a reason is given him, that he should do so; for it is especially just that he who has to set others right and correct them should know how to do this in his own case, whenever he is wrong.¹

LAW XII.**Who Has Power to Make Laws.**

An emperor or king may make laws for the people of his dominions but no one else has the power to make them with regard to temporal matters, except where they do so with their permission. Those that are made in any other way have neither the name nor the effect of laws, nor should be valid at any time.

LAW XIII.**How the Laws Should Be Understood.**

Laws should be thoroughly and expressly understood, always taking their true meaning in the clearest and most profitable sense, according to the words of which they are composed. And, for this reason they should not be written with abbreviations, but with complete words; wherefore wise men have said that the knowledge of the laws is not only to learn and repeat them literally, but to give their true explanation.

LAW XIV.**Who Can Interpret the Laws if They Should Be Doubtful.**

Where laws are doubtful by reason of errors in writing, or on account of their being imperfectly understood by him who reads them, for the reason that they should be properly explained and their truth made manifest, this must be done by him who made them or by another who occupies his place, and who has the power to make new laws, and to preserve those already made.

LAW XV.**How Laws Should Be Obeyed, and Judgment Rendered by Means of Them.**

All those who are under the dominion of the law-maker and for whom he has instituted the laws, are required to obey and to observe them and be judged by them, and not by any other written law made in any manner whatever; and he who makes the law is required to see that it is observed. And this also we enjoin upon others who belong to some other kingdom, that they should make their contracts, or agreements, or commit their offences in the country where they may be judged by the laws: for, notwithstanding they belong elsewhere, they cannot avoid being under control of the laws, when they commit an offence where those laws are in effect. And, although they may be subject to some other sovereignty, they cannot avoid being judged by the laws of that

¹ "*Erit concionans eloquio clarus, sententia non dubius, evidentia plenus.*" (For. Jud. I-1-6.)—Ed.

sovereignty in whose country they may have committed any of these acts. And if they should happen to be obstinate and unwilling to submit, the judges and justices must force them to do so by employing compulsion, as the laws of this our book direct. Moreover, we declare that it is becoming to the law-maker, on the other hand, to desire to live according to the laws, notwithstanding he may not be required to do so by reason of compulsion.

LAW XVI.

Why All Persons Are Required to Observe the Laws.

The king should observe the laws as he would his honor and his handiwork, because he is endowed with power and reason in order to dispense justice. For, if he should not keep them he nullifies his own acts by violating them, and, on the other hand, there will result to him injury of two kinds; first by abrogating such an excellent thing as this which he has done; second by inflicting a common wrong upon the people, and he himself will be discredited and considered destitute of prudence, and his commands and laws will be despised. On the other hand, the people should observe the laws as they would their lives and their well being: because by means of them they live in peace and receive pleasure and profit from their possessions. And if they should not do so, they show that they are unwilling to obey the commands of God, or those of their temporal lords, and oppose them, and put themselves in the pathway of death for three reasons; first, through disorder, second through boldness, third through iniquity, by demonstrating that they are wicked and that evil is more pleasing to them than good. For the aforesaid reasons kings and all others of the land are required to observe the laws. And from this no one can be excused by reason or belief, lineage, power, or station, nor even by proving that he is vile in life and deeds. For since the laws contain what is important for the praise of God and the increase of the Faith, as well as what is important for kings and other great lords, showing how they should act in the direction of their government and the control of those of the land whose benefit is that of all, in order that each may receive his share of the common good no one can be exempt from obeying and observing the laws; since those who do not do so, err against the laws of God and those of the temporal lords, and injury will result to themselves and to the country of which they are natives or inhabitants, and they will justly be liable to three penalties, that imposed by God, that imposed by their natural lord, and that imposed by the law of the land.

LAW XVII.

How Laws Should Be Amended.

For the reason that nothing can be made in this world which is not susceptible of amendment, if it should happen that anything should be contained in the law which requires correction it must be done in the following manner: If the king becomes aware of it, he must first consult with learned men and such as are skilled in the law, and they must examine thoroughly those things which require amendment, and this he must do with the largest number of good men,¹ and those from the greatest number of provinces, which he can assemble together, in order that many may agree on one opinion. For, notwithstanding the law is a good and noble thing, the more it is deliberated upon and carefully examined, the better and more stable it is. And when the matter

¹ The words in the original, *hombres buenos*, mean, as stated in the thirty-first rule at the conclusion of the treatise, the ordinary judges of the country. The wisdom of the king is disclosed by his thus calling together for consultation the best legal talent and experience in his dominions.—Ed.

has been well determined in this manner, the King must publish through all his dominions the errors which the laws formerly contained, and why he considered it right to amend them, and this is one of the best ways by which amendments can be made. However, if the King cannot assemble men in such numbers or of such intelligence or wisdom as aforesaid, he must act with the assistance of those who he thinks have the greatest love for God, for himself and for the benefit of the country.

LAW XVIII.

Laws Should Not Be Repealed Without Reasonable Cause, and How This Should Be Done.

Laws should not be repealed for any reason, unless they are such as neutralize the good which they ought to produce; and this happens where they contain anything contrary to the law of God, or seigniorial rights, or to the common welfare of the land, or to recognized morality. And, for the reason that doing a thing is a grave matter and undoing it a very easy one, the abrogation of laws and the depriving them entirely of their validity ought not to be done without the serious deliberation of all the good men of the country being such as are most honorable and learned, by discussing in the first place the faults they find in them in order that they may be removed, as well as the benefits they contain and such as can be added. And if, after they have examined everything, they should find that the principles of the laws incline rather to evil than to good, they can abrogate them, and repeal them altogether. If they should find that they contain a large proportion of good—although it may not be as great as the evil—they must abolish the excess of evil, and keep the remainder along with the excellence of the good, so that from the excellence of the good and the asperity of the evil, good and common law may be derived: wherefore, by all these means which we have mentioned laws may be abrogated, and by no others.

LAW XIX.

In What Way New Laws May Be Added to These.

Where a case arises concerning which no laws are found in this book and a new law must be made, the King should assemble wise and learned men to examine the principles of justice, that he may agree with them how he should make the law; and after this has been agreed upon, he must cause it to be written in his book, and also in all the others of the land, over which he has power and dominion; and the laws which are added and newly made in this manner have equal validity with the former ones, or even more authority, since men have used the former ones for so long a time that they are, as it were, grown old, and by their daily use they receive annoyance from them. And, moreover, because men naturally desire to hear, to know, and to see things which are novel, those who make laws should have for their aim good and justice that those who acknowledged it formerly should not interfere with it, nor those who come after impair it through ignorance. Therefore, he who makes the laws, should carefully examine the past and the future, and by carefully considering these two things he will easily understand the present, and the laws which are made in this manner must be placed alongside the others, and may even take precedence of them.

LAW XX.

For What Reason Men Cannot Escape the Operation of the Laws by Saying That They Were Ignorant of Them.

No one can escape the penalties of the laws by saying that he did not know of them,¹ for, since men have to be preserved by them by receiving as well as doing justice, it is reasonable that they should know them and read them, either by acquiring their meaning from those who have read them, or by hearing them discussed in some other way without reading; for men have excuses for many things which happen to them, as for instance for diseases and numerous other afflictions which occur in this world; but they cannot excuse themselves from sending others in their places to assert their rights in court; and if they should have no one to send, they should communicate with some of their friends who may happen to be in the place where they are to be judged by the laws, that they too may represent them and argue their cases for them, and they must give them authority to do so. And since by themselves, or by their representatives, or by means of letters, they are able to defend themselves, they cannot avoid doing so by saying that they did not know the laws, and if they should offer such a reason as this it will not avail them.

LAW XXI.

What Persons May Be Excused on Account of Not Knowing the Laws.

Certain persons may be excused from the infliction of the penalty which the laws prescribe although they did not understand them, or were not aware at the time that they were committing an offense against them: as, for instance, one who is so insane that he does not know what he is doing. And although it is understood that he committed an offence for which another man would be imprisoned or put to death, the person we have mentioned did not commit the act with intelligence, and the same guilt cannot be imputed to him as to another in possession of his senses. We decree that the same rule shall apply to a boy under fourteen years of age, and to a girl under twelve, and even although an act of debauchery should be proved against them they are considered irresponsible for their acts. Such persons shall be exempt from the penalty of the law because they had no knowledge, but if they should happen to be under the age of ten years and a half and should commit any other offence, as theft, homicide, deceit, or any other unlawful act whatever, they shall be exempt from the penalties commanded by the laws by reason of their want of age and sense. Moreover, we decree that knights, whose duty it is to defend the country and conquer it by arms from the enemies of the Faith, shall be exempt of not understanding the laws; and this should be the case when they lose any of their property or it is impaired by judicial decree, or by reason of contracts or litigation which they have entered into to their own injury;² or because they have lost some of their property on account of lapse of time: all these things, however, are understood to refer to those engaged in actual warfare. For, indeed, it is both just and reasonable that he who exposes his body to the danger of imprisonment or death should be sub-

¹ *Ignorantia eorum quae quis scire tenetur non excusat.*—Ed.

² The military importance and peculiar privileges of the Castilian *caballeros*, have, with much probability, been deducted from the institution of the Roman *equites*. The *ordo equestris*, whose members were of patrician rank, formed the most exclusive and distinguished corps of the Roman army. The latter were commanded by a prince of royal blood, and enjoyed political rights shared by no other organization. The Spanish *caballero* was regarded with the highest consideration by all classes, from the king to the peasant. It was an unpardonable disgrace for him to part with his horse or arms. To desert his post, at any time, incurred the penalty of death. Honored by the confidence of his sovereign, and revered by the people, his position was more to be coveted than that of the proudest noble. His order was the prototype of those of the military monks, half soldiers, half priests, champions of the Faith and defenders of the kingdom, who subsequently played such an important role in the wars of the Reconquest.—Ed.

jected to no embarrassment by which he may suffer annoyance, except he who does not study or become familiar with the laws when he has abandoned the practice of arms; unless where a knight should be guilty of treason, deceit, perfidy, or any offence that another man ought naturally to understand to be wicked, for he cannot then be exempt from the penalty which the laws prescribe. And we decree that the same rule shall apply to peasants who cultivate the soil or dwell in uninhabited places, and to shepherds who conduct their flocks through the mountains, and the deserts, and to women who dwell in similar places.

TITLE II.

Concerning Usage, Custom, and Fuero.

Nothing can prevent the laws from having the force and authority which we have mentioned except three things; first usage,¹ second custom, third fuero. These grow out of one another, and include natural law in themselves, as is demonstrated in this book; for just as a word is composed of letters, and meaning is derived from words, and reason from meaning, so usage originates from time, custom from usage, and fuero from custom. Wherefore, we desire in this Title to explain what use is; in what way it should be established; for what reason it gains force by time, and why it loses it. We shall also state what custom is; how many kinds there are; who can establish them and in what way; what it ought to be in itself; how it can be valid and have effect; and how it can be abolished. We shall speak in the same way of fuero, and show in what manner it interferes with the law and how it aids it, and how one is transformed into the other.

LAW I.

What Usage Is.

Use is something which originates from those things which man says, does, and pursues continually for a long time without hindrance.

LAW II.

How Usage Should Be Established.

Usage should be established so that it may be for the common benefit and without injury; and it should not be established secretly or in a clandestine manner, but in such a way that those who acknowledge reason and justice may know it and be pleased with it.

LAW III.

For What Reasons Usage Gains Force by Time, and for What Reasons It Loses It.

The reasons for which usage gains force by time are of five different kinds: First, where it relates to something which is advantageous and not evil, as we have already stated; second, where it is established publicly and after great deliberation; third, where the persons who practice it do so understandingly, and with the consent of those in whose power they are, or of others over whom they have authority; fourth, where it is not contrary to the established laws, or they not having been previously abolished; fifth, where it is fixed by the order of the lord who has power over those subject to it, or by the agreement of the latter among themselves, it being understood that great benefit will result therefrom, and the lord at once consenting to it and approving it. With regard to the force which usage gains by time there are two kinds; first, a short time, during which the use cannot be avoided; second, a long period dependent

¹ The definitions of these terms do not differ greatly from those employed by the Canon Law. "*Mos est vetustate probata consuetudo, sive lex non scripta.*"

"*Consuetudo autem est jus quoddam moribus institutum quod pro lege suscipitur, cum deficit lex.*" (Corpus Juris Canonici, I. 1, 4, 5.)—Ed.

upon its advantages; and, for these reasons it can be confirmed by lapse of time according to the nature of the use, and if it should not be established in this way it will lose its effect.¹

LAW IV.

What Custom Is, and How Many Kinds There Are.

Custom is an unwritten law or privilege, which men have made use of for a long period of time, aiding themselves by means of it in matters and on occasions to which it is applicable. There are three kinds of customs. The first is that which relates to something in particular, as a certain place or person. The second is general, affecting many persons as well as places. The third has reference to other distinct acts which men perform and with which they are content, and in which they manifest resolution.

LAW V.

Who Can Establish a Custom and in What Way This Can Be Done.

The word people means the union of persons of every description in the land where they are assembled together, and from this definition no man or woman, priest or layman is excepted. Where people of this kind, or the greater portion of them, practice doing anything for ten or twenty years, by way of custom, the lord of the land being aware of it and not opposing it, but approving of the same, they can continue to do it, and it must be considered and observed as a custom; provided during that period two decisions concerning it have been publicly rendered by them who are learned and accustomed to judge, without any objecting to it. The case would be the same where, within the above named time, anyone should raise a question, or file a complaint against such a custom, or say that it was not such a one as ought to prevail, and the judge, before whom this contest is brought, having heard the arguments of both parties should decide absolutely that it was a custom, the arguments of those who opposed it not being sufficient. Moreover, we declare that custom which the people desire to establish and practice must be reasonable, and not contrary to the law of God, or antagonistic to government, or against natural law, or opposed to the common benefit of the entire country where it is established; and this must be done with great deliberation, and not through mistake, or for the gratification of whim, or from any other motive than those of right, reason, and advantage; for if it should be established in any other manner it would not be a good custom, but would result in the injury of the people and the detriment of justice.

LAW VI.

What Force a Custom Has in Order to Be Valid.

Custom has great force when it is established with reason, as we have already said, for the disputes that men have among themselves, and which are not mentioned in the written laws, can be decided by the custom which prevailed concerning the matters about which the disputes arose, and it has also the force of law. Moreover, we declare that a custom can interpret the law when doubt arises concerning the latter, for as others are accustomed to understand it, so it should be understood and considered. And it has also other and great authority, for it can annul ancient laws made before it, if the king of the country should consent to employ it against them for as long a time, or longer than was mentioned above. This means, however, when the custom was gen-

¹ "*Optimus interpretes rerum usus.*"—Ed.

erally practised throughout the whole kingdom; but where the custom is a special one, it does not then abrogate the law, except in that place alone where it was practised. A custom, even though it should be a good one, is abolished in two ways: first, by means of another custom, employed against the one which was established originally, by command of the lord and with the consent of the people of the country; they understanding that it was more to their advantage than the former one, depending upon the time and the occasion when they practised it; second where a written law or fuero antagonistic to it is established afterwards, for then the law or the fuero subsequently established should be observed and not the ancient custom.¹

LAW VII.

What a Fuero Is and Why It Is So Called.

A fuero is a thing in which are included two others that we have mentioned, namely, usage and custom, because both of them must be combined in a fuero, to make it secure; usage, because men are accustomed to practice it, and love it; custom, because it is to them a kind of inheritance to reason about and preserve: for, if a fuero is—as it should be—a good usage and a good custom, it has as great force as law, because it sustains men, and by means of it they live with one another in peace and justice: but there exists between it and these other things a marked distinction, for usage and customs are established with regard to particular matters, whether many or few countries or only certain well known localities are concerned, but a fuero must be absolute and relate to everything which pertains in a special way to right and justice, and therefore it is more broad and general in its application than either custom or usage, for it can be stated and understood everywhere. It bears the name of fuero because it should not be mentioned or manifested in a concealed manner, but in the public squares and in other places to whoever may desire to hear it. The ancients designated by the word *Forum*, in Latin, the marketplace where men assembled to buy and sell their property, whence the name fuero is derived; and, so far as Spain is concerned, as a market is held in a public manner, so a fuero must be clear and manifest.

LAW VIII.

How a Fuero Should Be Established.

A fuero should be well and regularly established by paying attention in every respect to reason and right, equality and justice.² And it should be insti-

¹ As all power is presumed to emanate from the people, in theory at least, except where the doctrine of the divine right of kings is unqualifiedly admitted, custom, when long established and universally acknowledged, has generally been considered as of equal authority with, and, under certain circumstances, superior to law. This was formerly the rule in England. "*Consuetudo ex certa causa rationabilis usitata privat Communem Legem.*" (Littleton. Tenures. II-X-95).

Justinian incorporated into the Civil Law all customs which, at the time, had the force of laws and were approved as just and beneficial by the jurists of the Empire. While recognizing the respectable authority of custom and use if practised from ancient times—an indispensable requisite to their validity—the Code prescribes that they shall not prevail when contrary to reason or law. "*Consuetudinis ususque longae non vili auctoritatis est, verum non usque adeo sui valitura momento, ut aut rationem vincat aut legum.*" (Corp. Jur. Civ. Cod. VIII-LIII-2).

As is well known, the Common Law, or *Jus Commune*, of England is composed of customs and maxims whose origin is of remote antiquity, and upon which the judicial decisions of its tribunals have, for many centuries, been founded: "*Consuetudo regni Angliae est lex Angliae.*" A custom to be legal must be ancient, positive, uninterrupted, undisputed, not contrary to reason or inconsistent with others, and obligatory upon those subject to its operation. In England, a legislative enactment is superior in authority, and effectually abrogates any custom without regard to its scope or antiquity; which coincides with the provision of the Civil Law above quoted. The Common Law indicated the force of custom by the maxim: "*Consuetudo est optimus interpret legum.*"—Ed.

² The time-honored fueros of the Spanish people constituted one of the most important portions of their jurisprudence. In ancient times, every kingdom, and almost every province, had a system of its own, based upon original grants and charters of privilege, some of general jurisdiction, others applying only to municipalities. Many of them were of a democratic character, whose provisions encroached upon, or

tuted by the advice of good and learned men, with the assent of the lord, and the compliance of those whom it is intended to control. By the latter are meant men of good understanding, solicitous rather for the common benefit of all, and for that of the country in which they dwell, than for their own advantage; and who must not be avaricious, proud, ill-disposed, or entertain hatred toward one another when they establish it. And after this is done they can proclaim it and order it to be observed wherever it applies, and in this way it will be the same as a law.

LAW IX.

How a Fuero Can Be Abolished.

Evil and good are two very antagonistic things because one always interferes with the other and overthrows it whenever it can: so when evil has superior power and strength it conquers good, and strives to destroy it, and this good does also, whenever it can prevail: excepting that good has the greater advantage, because it is more noble in the exercise of its power. Therefore, as all good is contained in the right, so all evil is included in the wrong, and because wickedness is something to be abhorred, therefore goodness has the power to forever destroy it by means of right. Although a fuero may have been made for a good purpose, if it should happen that in the beginning care has not been taken to provide for the good; or, if it should not have been practiced as it ought, by not paying proper and full attention to the law of God, or to that of the natural lord or the good of the land; then, for anyone of these reasons, it ought to be abolished. When usage, custom, and fuero which we have mentioned, are of this description, there will come a time, well known and recognized, when they should be amended. The longer they last, and the more they are practiced the worse it is, and besides there result therefrom two things; first that he who should abolish the fuero and allows it to exist is considered weak and foolish, second, those who use it receive loss and injury therefrom.

were inconsistent with, the prerogatives of the Crown, and some of which had been extorted by armed force from the sovereign. The Basques, ever tenacious of their rights, long maintained their fueros—whose origin, based on tradition, was lost in antiquity—in the face of the determined opposition of the most despotic monarchs who ever held sway over the Spanish peninsula, and it was only in the last quarter of the nineteenth century that these stubbornly asserted privileges were superseded by the adoption of a liberal constitution.—Ed.

TITLE III.

Concerning the Holy Trinity and the Catholic Faith.

The origin of laws, temporal as well as spiritual, is this, that every Christian should believe firmly that there is one true God who has neither beginning nor end, who is neither subject to limitation nor change, and has power over all things, and that the brain of man cannot understand or describe Him perfectly; and that Father, Son, and Holy Spirit are three persons and one thing, simple, without division, which is God the Father, neither created nor begotten by another, the Son begotten by the Father only, and the Holy Spirit proceeding from both of them, all three of one substance and equal and of a power enduring together forever; and that although each one of these three persons is God, they are not three Gods, but only one, and moreover, although God is one, this does not prevent there being three persons. This is the beginning of all spiritual as well as corporeal matters, not only those which are apparent but those which are not so. He himself made all things good, but some fell into evil ways, certain ones by themselves, as for instance man, who sinned through the suggestion of the Devil. The Holy Trinity, composed of Father, Son and Holy Spirit, is one God, who gave to men through Moses, through the Prophets, and through the other Holy Fathers, instruction how to live according to the law: and, in the end He sent into this world his Son, who was born of the Holy Virgin Mary, of her flesh, conceived by the power of the Holy Spirit, composed of a reasoning soul and of flesh, a true man and the true God. This is our Lord Jesus Christ who, according to the nature of Deity, is eternal, and according to humanity, in so far as he was a man was mortal. He manifested to us openly the proper way to salvation; in order to save the race of men, he underwent death and passion upon the cross; and in spirit he descended into hell, and arose on the third day, and ascended to Heaven in body and in soul, and will come at the end of time, to judge the quick and the dead, to give to each one what he deserves: at whose coming all will be resurrected in body and soul as they formerly were, and be judged for good or evil, according to their works: and the good will have glory without end, and the bad eternal punishment. Moreover, we possess and believe firmly in, one general Holy Church within which all Christians are saved, and outside of which none can be saved: in which is made the sacrifice of the body and blood of Jesus Christ, Our Redeemer, by the symbols of bread and wine, and we believe no other can perform this sacrifice but one who has been ordained for that purpose by the Holy Church. Moreover, we firmly believe that children as well as persons of mature years who have received baptism according to the ritual of the Holy Church are saved by that means: and that if they should sin after baptism they can nevertheless be saved, atoning for their sins by sincere penance. This is the true belief contained in the Articles of the Holy Catholic Faith, which every Christian must believe and observe, and whoever does not so believe cannot be saved. Wherefore we firmly command all those belonging to our kingdom to observe and believe this, as it is set forth, and in the way that the Holy Roman Church observes and believes it. Any Christian whosoever that entertains another belief, or acts contrary to this, must suffer the penalty of heresy. And, for the reason that the Sacraments and the Articles exist for the purpose of preserving this belief and maintaining it fully, since, as they are pillars of the Faith, all depends upon them; hence it is necessary that since we have spoken of the Faith, we should now speak of the Articles, and show what they are, of what number they consist, and how they ought to be observed.

LAW I.

What the Articles Are in Themselves.

The Articles are certain sayings, principles, and truths, which the Apostles promulgated and inserted into the Faith, through the grace of the Holy Spirit which our Lord Jesus Christ conferred upon them. These Articles every Christian should know, believe, and truly observe, in order to have full belief in Jesus Christ, and be saved by means of it. For these reasons the *Credo in Deum*, called in Latin Symbolum, which means a morsel, was instituted, and this is why each of the Apostles expressly stated by his own mouth what he believed; and all their statements added together compose the complete Creed. The following is what each one declared: St. Peter said, "I believe in God the Father Almighty, Creator of Heaven and earth"; St. John said, "And in Jesus Christ his only Son, our Lord"; St. James, the son of Zebedee, said, "Conceived by the Holy Spirit, and born of the Virgin Mary"; St. Andrew said, "Who suffered by the power of Pontius Pilate, was crucified, dead, and buried"; St. Philip said, "Who descended into Hell"; St. Thomas said, "On the third day he arose again from among the dead"; St. Bartholomew said, "Who ascended into Heaven, and sits at the right hand of God the Father, with power over all things"; St. Matthew said, "Who will come to judge the living and the dead"; St. James the son of Alphaeus said, "I believe in the Holy Spirit"; St. Simon said, "In the Holy Catholic Church, the assembly of the Saints"; St. Judas the son of James said, "And the redemption of sinners"; St. Matthias said, "In the resurrection of the flesh, and in the life everlasting." These are called Articles, which mean joints, and just as the articulations of the hands and feet are joints which form the fingers, and the fingers compose the hands; so these words of the *Credo in Deum*, are each one, by itself, like a joint, and all united together form a declaration of principles, which resembles the hand inasmuch as it embraces the entire Creed. For this reason every Christian should know and truly believe that this is the genuine Creed of God which unites man to God by means of love. And he who does so believe, is a true Christian, and he who does not so believe, cannot be saved, nor is he a friend of God.

LAW II.

How Many Articles There Are.

We desire to show here for what reasons the Articles consist of fourteen and no more and no less, in order that every Christian may the better know and learn them. Wherefore, we declare that for a good reason it is suitable that they should be fourteen in number: seven relating to the proof that Jesus Christ, according to Deity, is God in himself, and the other seven that, according to humanity, he is man. The first, as regards Deity, is to believe that he is God; the second, to believe that he is a powerful Father; the third, to believe in the person of Jesus Christ his Son; the fourth, to believe in the person of the Holy Spirit; the fifth, that he created Heaven and earth; the sixth, that he created and instituted the Holy Catholic Church, which is the assembly of the Saints, and in the remission of sins; the seventh, to believe in the resurrection of the body and of the soul, and that the good will have perpetual glory, and the bad punishment. The other seven Articles which relate to humanity are the following: the first is to believe that he was conceived by the Holy Spirit; the second that he was born of the Virgin Mary; the third that he suffered, died and was buried; the fourth that he descended into Hell; the fifth that he arose on the third day from death to life; the sixth that he ascended up

to Heaven and stands at the right hand of God the Father; the seventh that he will come to judge the living and the dead. Wherefore, whoever is not thoroughly familiar with these fourteen Articles cannot know perfectly the creed of God.

LAW III.

How the Articles Should Be Observed.

The Articles of the Faith should be well and perfectly observed, so that no one may dare to try to thwart them, or violate them, or disparage them in any way whatever. For he who does this shows plainly that he is not a Christian nor a friend of God, and that he has a desire to destroy the Faith. And moreover, in addition to the punishment which God will inflict upon him as an infidel in the next world, he deserves in this world at the hands of Christians, and especially from all the lords, the penalty which the laws of the seventh Partida describe, and which those must undergo who do not believe in the religion of Jesus Christ, or attempt to abrogate or depreciate its acts.

TITLE IV.

Concerning the Seven Sacraments of the Holy Church.

In order to know God and to gain his love it is proper that every Christian possess in himself two things: First the Catholic Faith, in which he must believe; second the Sacraments of the Holy Church, which he must accept; for, as the soul and body make up a perfect man and Jesus Christ is both man and God, so he who believes in the Catholic Faith and accepts the Sacraments of the Holy Church is entitled to the name of Christ and is a thorough Christian. As in the previous Title we treated of the Catholic Faith, in this we desire to treat of the Sacraments of the Holy Church, which are seven in number, because it is proper and indispensable that every Christian accept five of them, when he is qualified to do so. The first is Baptism; the second, Confirmation; the third, Penance; the fourth, Communion; and the fifth, Unction, which is given to the sick when they are thought to be near their end. The other two are voluntary, and no one should be compelled to receive them if he should not desire to do so, one of them being the order of the Clergy, and the other Marriage. We shall show in the first place why there are seven Sacraments and they cannot be more or less in number. Also what virtue they have, and how they should be given and received, and all other matters which, according to the Holy Church, pertain to them, and also what penalty those deserve who err in giving or receiving them, or in not believing in them as they should.

LAW I.

Why the Sacraments Are Seven in Number, and Not More or Less.

We have stated that there are seven Sacraments in the Holy Church, and that there can be no more and no less; and now we desire to explain why this is the case; as the Holy Fathers so divided them, and declared that from the sin which Adam committed arose two evils, which resulted in great injury not only to him but also to all those who descended from him, one of which is guilt and the other punishment. The evil of guilt is divided into two kinds, the first is the sin arising at the birth of man which is called in Latin, *originale*, and is so named because all are born in this sin, since they come of the race of Adam who committed wrong because he fell into guilt; and to remove this the Sacrament of Baptism was instituted, because it purifies it and removes it. The second kind of guilt relates to the sin into which men fell, which is called actual sin, and this is divided into two kinds. Of these one is mortal and the other venial sin, and the Sacrament of Penance was instituted to remove the guilt of mortal sin into which men fall by reason of the faults which they commit after Baptism; for, if they sin previous to Baptism, their sins are removed by Baptism, since this Sacrament was especially instituted for the removal of sin, as has already been stated. To remove the guilt of venial sin, the Sacrament of Unction, which is given to every Christian, when it is understood that he is near death, was instituted, for by this means all venial sins are removed. And the above named evil of punishment which comes upon men is divided into four kinds. The first of these is want of knowledge, and to oppose this was established the Sacrament of the Holy Orders, for it affords an opportunity to understand and know what should be done. The second is the weakness of the will of men who cannot resist the temptations which the devil gives them in order to induce them to sin; and to oppose this was insti-

tuted the Sacrament of Confirmation, which the Bishop makes with the Holy Oil, on the forehead of every Christian after Baptism, and this is called Confirmation because it confirms the Christian in the Faith, and gives him power to resist sin. The third is the eagerness man possesses in himself to carry out his own will, according to the natural dictates of the flesh, and in opposition to this was invented the Sacrament of Marriage. The fourth is the natural wickedness which men have in themselves, in desiring rather to do evil than good, and by this means they become slaves of their own sins; and opposed to this is the body of Our Lord Jesus Christ, for he who receives it as he should, is sustained by it in good conduct, and is given strength to avoid sin. Thus, for the reasons which we have mentioned, there are seven Sacraments, and their number cannot be either more or less.

LAW II.

What Baptism Is.

Baptism is something which cleanses man externally and especially his soul within, and this is done by the power of the holy words composing the proper and true name of Our Lord God, who is Father, Son and Holy Spirit, and by the element of water with which that name is joined, when Baptism is administered. So great is the virtue of these words and of the water, that touching the body outside it washes the soul within and places a mark upon it. It was established when Our Lord Jesus Christ wished to be baptized by St. John the Baptist in the river Jordan, and he did this as an example to men that they should be saved by means of Baptism.

LAW III.

In What Way Baptism Should Be Administered and Who Can Administer It.

After Our Lord Jesus Christ was baptized, he said to his Disciples: "Go through all the world, and preach, and baptize nations in the name of the Father, Son, and Holy Spirit": and by means of these words which he uttered, in which he mentioned to them His Holy Name, he showed them the way they should do this. Therefore, whoever has to baptize another must speak thus: "I baptize thee in the name of the Father, the Son, and the Holy Spirit, Amen;" and, for baptism to be complete, he must omit none of these words. Moreover, Our Lord Jesus Christ left us an example of his own baptism, that no one can baptize himself, but must receive it at the hands of another. This he, who was a perfect saint, showed us when he desired to be baptized by the hand of St. John. And although baptism ought not to be administered more than once, still, if doubt should arise whether anyone has been baptized or not, the Holy Church approves that it be done by making use of these words: "If you were baptized, I do not baptize you a second time, but if you were not, I baptize you in the name of the Father, the Son and the Holy Spirit."

LAW IV.

How Many Kinds of Baptism There Are.

There are three different kinds of baptism. The first is by water, as we have stated in the preceding law, and, referring to it, Our Lord Jesus Christ said in the Gospel that he who was not born of water and of the Holy Spirit could not enter into the Kingdom of Heaven. For undoubtedly he who is baptized is, as it were, spiritually born a second time from the condition of

death in which he was through the sin of Adam into the condition of life, being cleansed by baptism from the sin in which he lay. The second kind of baptism is what is called that of the Holy Spirit; as, for instance, when God puts it into the heart of anyone to be baptized with water and he cannot find anyone to baptize him. Wherefore, if he should die having this intention, he will be saved just as if he had been baptized: for in this instance his will should be considered the same as if it had been carried into effect, although it was not accomplished, since he did not live long enough for this to be done. The third kind of baptism is by blood; and this is when anyone believes in Jesus Christ, and, before he can be baptized, is killed for the sake of the Faith, for such a person is baptized with his own blood. Of this we have examples in the case of many martyrs who believed in Our Lord Jesus Christ, and before they could be baptized were put to death, and therefore this death availed them as much as if they had been baptized.

LAW V.

What Virtue There Is in Baptism.

There is very great virtue in Baptism, for by means of it God pardons all sins, and he who is baptized does not have to do penance for sins which he committed previous to Baptism: but, if he is of age, he must grieve in his heart for the sins which he has committed, and repent of them. But where anyone receives Baptism merely because he shows by his words that he desires to be a Christian, but in reality does not do so, such a person, although he may be baptized, will not have his sins pardoned by means of Baptism, except where he has banished this deceit from his heart. Baptism has still another virtue, for whoever receives it from a Christian, whether he be a Jew, or a Moor, or a Pagan, a heretic, a woman or a man, when he who baptizes pronounces the words mentioned in the next law but one preceding this, Baptism will be efficacious for him who was baptized and he shall be saved by its means.

LAW VI.

Why Godfathers Should Make Responses at Baptism, and Who Can be a Godfather.

He who desires to be baptized, being of sound mind, must, in the first place, believe that by means of the Faith of Our Lord Jesus Christ, which he invokes for Baptism, he will receive salvation, as Christ himself showed in the Gospel, when he said: "Whoever believes and is baptized will be saved;" and, this means that when those who desire to believe are possessed of judgment, they must answer for themselves, unless they are dumb or deaf, or have some infirmity or impediment of speech, or there is something else which prevents them from doing so: then, in such cases, their godfathers must answer for them. The same rule applies to children, who cannot answer for themselves, nor have sufficient understanding to believe: they, however, are saved through the faith of their sponsors. Although Baptism can be given by those who are not of our belief, as the preceding law declares, such persons cannot act as sponsors: and the reason for this is that they do not believe in the Faith and would be unable to expound it to them. However, if a Moor, or any other person who does not believe in our religion, should be brought by anyone to be baptized; or should be removed from the baptismal font; or should be held while being baptized, such baptism shall avail to save the person baptized in the Faith of the Holy Church; but he who held him, or removed him from the

font shall not be his godfather, and moreover, anyone who has not been anointed cannot act as sponsor at confirmation.

LAW VII.

Who Can Be a Godfather, How Many Godfathers There Should Be, and Why They Are So Called.

A godfather derives his name from a father. For as a man is the father of his son by natural birth, so is the godfather the father of one who is united to him by spiritual birth. This also we declare to be the case with godmothers. And as a man, after he is once born, cannot be born again naturally; so he who has been once baptized, cannot again be baptized spiritually. And according to this comparison which is made between the godfather and the father, a godfather cannot be more than one in number, as the natural father is only one, nor can the godmother be otherwise; however, if there should be more than one of them, Baptism is not on this account invalid, and indeed the Holy Church sanctioned this for another reason, that is, in order that many sponsors may not be a hindrance to the marriage ceremony. This same regulation should be observed in catechizing, which is a Greek word, and means in our own language to breathe; and this takes place when anyone is conducted to the door of the church to be baptized and receive the Holy Spirit. It ought also to be observed in the ceremony of confirmation, which is another kind of compaternity, and means the confirmation in the Faith of him who has been catechized and baptized. This is the Confirmation which bishops make with chrism on the forehead of Christians, and no one else has the right to do this, for in catechizing, or in Baptism, or in Confirmation, many sponsors should not be appointed. And this is made the rule lest any of those who act as sponsors may interfere with the marriage ceremony, as is above stated. There should not, moreover, be more than one godfather or one godmother in these three above named instances, unless there is some good reason for it.

LAW VIII.

Who Has Power to Baptize.

The power of Baptism is conferred on the priests of the Catholic service in preference to others; however, if one of them cannot be found in time of emergency, a deacon or sub-deacon can administer Baptism. If anyone whom it is desired to baptize, should be in danger of death, and no priest is at hand, then a lay-Christian or any other man whosoever, can administer Baptism, as is above stated. And, not only those whom we have mentioned, can confer Baptism in time of emergency, but also a father can baptize his son, when he sees that he is at the point of death, if he is not able to find anyone else who can do so: and in a case of this kind there should be no dispute between him and his wife, if they should not be of one mind.

LAW IX.

What Penalty He Must Undergo Who Causes Himself to Be Baptized Twice.

He who dares to have himself baptized twice, being certain that he has already been baptized, should not go unpunished, because it is evident that he did this in contempt of the Sacrament of Baptism. For this reason the Holy Church maintained that if he were a layman, he could not be subsequently ordained, and if he were a priest, he should be deprived of his orders. More-

over, she decreed that if a bishop, or any other prelate, baptized him, the latter must be deprived of his dignity and orders as a man who has violated the ordinances of the Holy Church.

LAW X.

The Orders That An Unbaptized Person Takes Are Not Valid.

Baptism is entered into in order that men by its means may be entitled to receive the other Sacraments, as is stated in the beginning of this Title. For every man who desires to have them must, in the first place, receive Baptism, which is, as it were, the foundation upon which all the other Sacraments must rest. For which reason, if anyone should be ordained in the service of the Church, or in any other Holy Order whatever, and it should afterwards be discovered that he had not been baptized, it will be the same as if he had not received any Order at all; but he must cause himself to be baptized, and afterwards ordained, as from the very beginning. However, if he should firmly believe in his mind that he had been baptized, although he had not been, it will be just as available for his salvation, or to enable him to receive Holy Orders as long as he believes this, as if it had actually been a fact. For since he believes that he has been baptized in the Faith of Our Lord Jesus Christ, and in the Holy Church, the belief which he has will qualify him to receive Holy Orders, and perform the rites of the Church. But, if after he has been of this opinion, he should ascertain positively that he had not been baptized, or should be in doubt concerning it, and should not cause himself at once to be baptized, having an opportunity to do so, he then begins to treat Baptism with contempt, and will lose the other Baptism of the Holy Spirit which formerly existed by reason of the belief which he held: and, from that time forward, the orders which he has received will not avail him anything, because there was no foundation upon which they could rest: and for this reason he should cause himself to be baptized and ordained, as has been mentioned; for when anyone becomes doubtful on this point, we ought to suspect that he has not been baptized, and this is the case on account of the danger to his soul which he may incur if he should not do so.

LAW XI.

On the Second Sacrament, That Is Confirmation, and Who Can Confer It and in What Way.

Such Christians as have been baptized should be anointed in order to be Christians in every respect. For as they are cleansed by Baptism of all sins, so by Confirmation they receive the Holy Spirit, which gives them strength to struggle against the Devil and avoid his temptations, and this is one kind of Unction. It is made with chrism upon the forehead, and chrism must be composed of oil and balsam. This Sacrament of Confirmation, cannot be administered by anyone who is not an archbishop or bishop. The bishop must be fasting when he anoints, as well as all those who receive this Sacrament, and all who are of age who wish to receive it must be admonished to confess before doing so, in order that they may be pure when they receive the gift of the Holy Spirit. No one should receive it more than once, as we have stated in regard to Baptism, and if he should knowingly do so, he commits an error, and must undergo the same penalty. This Sacrament was established in the Holy Church in imitation of the one the Apostles made, when they placed their hands upon men and they received the Holy Spirit. For as they then received it through them, so now they receive it through the bishops, who occupy their places, when they administer the rite of Confirmation to them.

LAW XII.**On the Other Kind of Unction Which Is Given to Bishops with Christ When They Are Consecrated, and What Such Unction Means.**

Unction is made with chrism in a different way from that mentioned in the preceding law, and this is when bishops are consecrated. They are anointed with it on the crowns and on the hands, and by the Unction made upon the heads of bishops it is understood that they should be frank and clean in their hearts towards God, and externally of good report as far as men are concerned. For they should love God with all their hearts and with all their minds, according to their intelligence and their ability, on account of the good which he did to the race of men, for he nurtured, redeemed and governs them, and will reward them in another world. And, moreover, they should love every Christian, as themselves, evincing solicitude for his benefit, protecting him from injury, and desiring that he may be saved. Also, by means of Unction of the head, it is understood that they are clothed with great honor and power in the Holy Church. By the anointing of the hands it is understood that they ought to labor earnestly, doing good to all men, and especially to those of their own Faith, and that they receive power to bless, to consecrate, and to perform in the Holy Church the other duties which relate to their office; and, for this reason, when a bishop is consecrated, he who anoints his hands, says: "O Lord, come and bless these hands, in order that, by this Holy Unction, and by thy blessing, all things that they consecrate may be consecrated, and all that they bless may be blessed in Thy Holy Name." This same benediction the bishop pronounces upon the priest, when he anoints his hands and ordains him for the service of the Church.

LAW XIII.**On the Unction Which Is Given to Kings on the Shoulder, and What It Signifies.**

According to the ancient religion they anointed kings with holy oil on the head, but, according to our new religion they are anointed in another way, in accordance with what the prophet Isaiah said concerning Our Lord Jesus Christ, namely, that he is to be king of heaven and earth, and that his empire will rest upon his shoulder. And this was accomplished when they placed the cross upon his left shoulder, and compelled him to carry it there, by which he gained perfect virtue in heaven and on earth: and for this reason Christian kings who hold his place in this world for the dispensation of justice and law, are required to bear every burden, and endure all trials which may come upon them, for the sake of the honor and exaltation of the cross. Therefore, in these times they anoint them with holy oil on the back part of the shoulder of the right arm, as a symbol that every burden, and every labor that for this reason may come upon them, they must endure with good will and consider it light, through the love of our Lord Jesus Christ, who said in the Gospel: "*Jugum meum suave est, et onus meum leve*": "My yoke is easy, and my burden is light."

LAW XIV.**In What Places Those Who Are Baptized Should Be Anointed, and for What Reasons This Is Done Before Baptism.**

Balsam and oil are necessary to make chrism, as was stated in the fourth law preceding this one, for the following reason: By the oil is understood

good will, and by the balsam, (which is aromatic), is understood good report, and it is made of these two substances to show that the person anointed has pure intentions, and is of good reputation. Not only are bishops and kings anointed with holy oil, but all Christians twice before they are baptized; first, on the breast, and second, on the shoulders. They are anointed on the breast in order that by virtue of Uncction, of the Cross, and of the Holy Spirit (which is the love of God), they may be free from all the errors and ignorance they formerly had, and may have good thoughts. They are anointed between the shoulders that all idleness may be removed from them and that they may be able to perform good works, for without good works faith is dead. Moreover, they anoint them on the shoulder for another reason, that while performing good works they may be strong to endure hardships in the service of God.

LAW XV.

In What Places Persons Baptized Should Be Anointed After Baptism, and for What Reason.

A person who is to be baptized must be anointed twice with holy oil before he receives baptism, as the former law declares; but after he is baptized he must be anointed twice with chrism; once on the top of the head in the form of the cross, and the other on the forehead. The Uncction on the top of the head is given, that he may be prepared to give an explanation of the Faith to every man who demands it of him. That on the forehead is given that, openly and without hindrance, he may disclose what he believes, this being in accordance with what Our Lord Jesus Christ said in the Gospel: "*Qui me confessus fuerit coram hominibus, confitebor ego eum coram Patre meo,*" which means: "Whoever confesses me before men, I will cause him to be acknowledged before my Father who is in Heaven." For this reason a person is anointed with chrism after Baptism, and no one else should be anointed with it unless he is a Christian, for *crisma* and Christian are derived from the name of Christ. This kind of Uncction which is given on the forehead is called Confirmation: and no one but a bishop can administer it, as we have stated above. The other Uncction, however, which is made also with chrism on the top of the head after Baptism, as well as the others made with oil before Baptism, can be administered by priests qualified to say mass.

LAW XVI.

What Other Things Are Anointed with Holy Oil.

According to the custom of the Holy Church, other things besides the persons mentioned in the preceding law must be anointed, as, for instance, when churches are consecrated, the walls are anointed with chrism by tracing crosses on the opposite sides. And the communion tables and the altars are also anointed when they are consecrated, and the chalices when they are blessed. This we have derived from the example of the old religion when God ordered Moses to anoint the Tabernacle and the Ark of the Covenant, and the tables and the utensils with which they performed sacrifice. And we have it also from the example of the new religion and from Pope St. Sylvester, for when he consecrated an altar he anointed it with chrism, whence all prelates who came after Pope Sylvester derived the practice of anointing the altars and the other objects which are mentioned in this law.

LAW XVII.

Concerning the Third Sacrament, Which Is Penance.

St. John the Baptist possessed in himself exceeding sanctity, and for that reason our Lord Jesus Christ loved him so much that he said of him that he was the greatest of all who had been born of man and of woman; and he loved him so perfectly that he sent him as his messenger, to preach before his coming and to show men the way of salvation, preaching to them Penance and Baptism, for by its means they obtain the kingdom of God; and for this reason Penance is one of the greater Sacraments of the Holy Church. Wherefore we desire to explain here what Penance is, why it is named, in what way it is of benefit, and how many kinds of sin there are for which it must be performed. Also what things should be done that men may be relieved of the sin into which they fall, how they should confess, what questions should be asked them by the Confessors, and what they should not ask. Also who can impose Penance, and for what reason the parishioners of one church may go to confess to the priest of another; and how they must have faith in order to be saved by confession; what penalty priests who reveal confession should undergo, and what injury results to the dead by mourning for them. And in addition to this, we shall speak of remissions, pardons, and indulgences.

LAW XVIII.

What Penance Is, and How Many Kinds There Are.

The Holy Fathers described many kinds of Penance, in order that men might know how to perform them perfectly. They declared that Penance is for the purpose of causing man to repent and mourn over his sins so that he may not have any further desire to return to them. There are three kinds of Penance. The first is that which the priests call solemn, which means Penance performed with great devotion, and is done during Lent in the following manner: Those required to perform it must come to the door of the church on the first Wednesday in Lent, barefooted, and clothed in woolen cloth, which must be common in quality and cheap, with their faces cast down to the earth with great humility, and in this way confessing themselves guilty of the sins which they committed, and showing that they have great desire to do Penance for them; and the arch-priests and priests of the churches where they are parishioners, and who have heard their confessions, must accompany them. After this the bishops, along with the priests, must come to the church door to receive them and bring them inside, chanting the seven penitential Psalms, weeping, and praying God to pardon them. And after the Psalms are chanted, the bishop must rise from prayer, and place his hands over the heads of the penitents, and throw ashes upon them, and sprinkle them with holy water, clothing them in hair-cloth, and with sighs and tears pronouncing these words: "As Adam was expelled from Paradise, so shall they be driven from the Church for their sins"; then he must order those who have charge of the box containing the sacred wafer to drive them forth; and while this is done priests must follow behind them, repeating the service which begins thus: "*In sudore vultus tui vesceris pane tuo*," which means, "In the sweat of thy brow and in the fatigue of thy body thou shalt eat thy bread." They must remain at the church door during the entire time of Lent in small miserable huts, and on Maundy Thursday the arch-priests and the priests who heard the confessions of all those persons must finally come and present them again at the door of the church, and bring them inside, and they should remain in the church during the canonical hours, until Whitsunday, but they must not communicate or receive the salute of

peace on those days with the others; nor can they again enter the church until the ensuing Lent, doing this each year until their Penance is completed, and when it is completed, the bishop must reconcile them, for no one else can do so. After they have been reconciled they can enter the church, and do as other faithful Christians do.

LAW XIX.

Who Can Impose Solemn Penance, and Upon Whom It Should be Imposed.

No priest shall presume to impose solemn Penance in the manner which we have described in the preceding law, for this does not belong to the duties of anyone but the bishop, or someone whom he especially commands to do so. Moreover, it should not be imposed except for mortal sin, which some man may have committed, and it must be very grave, and very heinous, and so notorious that all those of the country where it took place speak of it, and condemn it; nor should such Penance be imposed upon anyone more than once. Moreover, the Holy Church has disapproved of the imposition of this Penance upon any priest, unless he should first have been deprived of his office; and this was done on account of the Sacrament of the Holy Orders. Any man who has undergone such Penance, cannot henceforth be either priest or knight; nor can he wear colored cloth or marry; if, however, he should marry, his marriage will be valid.

LAW XX.

On the Penance Called Public, Why It Is So Named, Upon Whom It Should Be Imposed, and Who Can Impose It.

Another kind of Penance is called public, because it is performed in a public manner. This occurs when anyone is ordered to go on a pilgrimage, or wear around his neck a stick a cubit in length, or a scapulary, or to be clothed in any dress belonging to a religious order: or wear an iron bound upon his arm, or about his neck, or go naked, or in his undergarments. It is also called public Penance where those who perform it are shut up in a monastery, or in any other secluded place, to remain there all their lives, on account of some great sin which they have committed. And therefore it is public, because it is done advisedly. This Penance can be imposed by any priest qualified to say mass, and it can be imposed upon a member of the clergy as well as upon a layman. This is the second kind of Penance. The third is what priests call private, which is imposed secretly; and this all Christians must invariably do when they confess their sins privately.

LAW XXI.

Who Has Authority to Hear Confessions.

Christians should confess their sins to priests qualified to say mass. These have power to hear confessions on account of the authority which they receive from the bishops, since the latter occupy the place of the Apostles in the religious order which they acquire through the mass. Other religious teachers do not possess this power, however, unless they are qualified to say mass; for they cannot impose Penance, or baptize, or preach to the people, or practice those other things which relate to the cure of souls, unless they should happen to have a grant from the Pope in which he bestowed it upon them; or unless the bishops appointed them to the service of certain parochial churches set apart for the use of the religion to which they belong, and this must be done with the consent of their superiors of that order. And notwithstanding it is

stated above that men should confess to a priest qualified to say mass, this is not to be understood that they have to make confession to another when they are not his parishioners, but each one must confess in his own church. And although they may wish to confess to another priest, they cannot do so without permission of the former, or of another superior ecclesiastic where they are parishioners, for another cannot bind or loose except by their order. Ecclesiastics of superior rank, however, as bishops and those above them, and others who have no other authority superior to theirs, except the Pope, can confess to anyone they wish without asking permission, provided he to whom they confess is a priest qualified to say mass.

LAW XXII.

Under What Circumstance a Parishioner of One Priest Can Confess to Another, and Not to His Own.

The preceding law declares that the parishioner of one church cannot confess to the priest of another; but there are certain cases in which he can do so, and these are five in number. The first is when the priest is not sufficiently well informed to give him advice, and he desires to go to another who may know more than the former, but he must first ask his permission, and if he should not be willing to grant it he can apply to his superior, and it cannot be that when he explains to him that he does this for the good of his soul, that he should not be willing to give advice. The second case is when he leaves his parish and goes to live in another, for then he can confess without the permission of any priest of the former parish. The third is when he goes from one country to another, not having a desire to stay in one place, for then he can confess to any priest whomsoever, provided the latter has power to hear confessions and impose penance. The fourth case is when he leaves his home and travels by land or sea, seeking another place for a residence, or departs on a pilgrimage, or a trading expedition, or for any other reason whatsoever; for then he can confess wherever he goes, as is above stated. The fifth is when he who is the parishioner of one church, commits a sin in the jurisdiction of another, for such a person can confess to the priest of the other parish where he committed the sin if he desires to do so. Each one should confess to the nearest priest he can find, since the longer a sin remains in the soul of a man the more it harms it.

LAW XXIII.

What Things Penance Must Include, in Order That Salvation May Be Obtained by Means of It.

Men gain salvation from their sins by performing true Penance, and for this three things are necessary. The first is that they mourn in their hearts on account of the sins which they have committed. The second, that they confess them truly, not knowingly concealing anything, or refraining from stating all they remember. The third, that they correct their sins, in the way that those to whom they confess command them. These three things every sinner must do, because he has sinned against God in three different ways; first, because that he took pleasure in thinking of sin; second, that he consented to it desiring to commit it; third, on account of his presumption in accomplishing it by word and deed. Thus, on account of these three evils, every Christian, who confesses truly, must make the three aforesaid atonements; for he must grieve in his heart on account of the evil thought which he had and in which he took pleasure; and he must say by his own mouth why he was so shameless as to desire to accomplish it; and he must make atonement

for the presumption of which he was guilty in consummating the sin. And, to demonstrate these things, Elias the prophet, by the command of God, threatened Azahel of Damascus, when he said to him, on account of the evils and violence which he had three times inflicted upon the Jewish people, that if he repented and would do Penance for it, he would pardon him; but if he should oppress them for the fourth time, he would not pardon him, but would chastise him. Wherefore, by these wrongs and hardships are understood three kinds of sins into which men fall, thinking evil, agreeing to it, and afterwards committing it. The fourth is when they do not wish to perform Penance for their sins, and have a desire to continue in them. Moreover, God will not pardon him who dies in this condition; for it is but right that he who desired to live in sin all his life, without performing Penance or repentance, should after his death remain in eternal punishment.

LAW XXIV.

How Many Kinds of Sins There Are, for Which Penance Must Be Made.

The Holy Church explains how God, in three ways, pardons sins when they are confessed; and gives an example of this in the three persons whom Our Lord Jesus Christ raised from the dead, while he was on earth; and what he did then in the body, he still does, in like manner, in the soul. In the first place, he resurrected the daughter of the chief of the synagogue, who lay dead in her house, and by this is understood the sin of evil thoughts, which man commits: and when he does Penance for them, Our Lord God raises him to life in his soul, which was dead on account of the sin against God, by reason of the evil thought he had in his heart, that is if he confesses it; just as he raised that damsel from the dead, in her own house. Another dead person whom he brought to life, was a widow's son, and when they were taking him to be buried, those who bore him met Our Lord Jesus Christ outside the gate of the city: and his mother and the other persons who were carrying him were mourning, and he brought him to life; and by this he desired it to be understood that the sin which man commits by speaking any words which may open the way for him to commit the sin which was in his thoughts, or by acting in any other manner whatever in order to commit it, and does Penance for, Our Lord Jesus Christ brings him to life in his soul, which was already in the way to commit the sin; just as he brought to life the son of the woman whom they were carrying to burial. The third that he brought to life was Lazarus, who had been dead for four days, and from whom proceeded already a very offensive stench, and by this he desired that we should understand, that for the sin which man commits, not only by thought or speech, but carrying it out fully in deed, Our Lord God brings him to life in the soul, when he performs Penance, just as he brought Lazarus, who already stunk, to life from the very tomb; so, as men abhor the body of a dead man which is already decayed, because it has a bad odor, so God detests the sinner when he completes his sins by works: and for this reason the Holy Church mourns, and prays to God for such as are less in deed and greater in sin, as the saints said: "May the Holy Church thy Mother weep for thee, and wash away thy sins with her tears": and this is done just as St. Mary Magdalene and St. Martha wept, and prayed Our Lord Jesus Christ to bring to life their brother Lazarus, while they mourned for him with the others who accompanied them.

LAW XXV.**In What Way Priests Should Hear Confessions, and What Things They Must Bear in Mind.**

Priests who hear confessions must be well informed in order to impose Penance upon those who confess to them, since they occupy the place of God for the judgment of souls. They must first hear the sin which man confesses, and afterwards inquire diligently into the matters relating to it, in order to know the truths, which are called in Latin circumstances. These relate to the character of the sin, which he who confesses committed, and the age of the sinner, whether he is a young man or an old one, and whether he is well or sick, free or slave, rich or poor, a priest or a layman, learned or illiterate, a prelate or another person of inferior rank; as well in what place he committed the sin, whether he committed it by himself, or with the assistance of another, and what induced him to commit it, whether he did it willingly or by force, how many times he committed it, and in what way, and, above all, if the sinner evinces repentance because he sinned. And when he has inquired into all these things he should impose a Penance opposite to the sin which was committed, and another according to his judgment and which he knows that the party will be able to perform. Moreover, he who goes to confession, must be very obedient, and very eager to make atonement for the sins which he committed, and according as he to whom he gives his confession shall direct him, for in any other way it will not be genuine, or avail for his salvation.

LAW XXVI.**What Things Confessors Must Ask Those Who Come to Them to Confess.**

Confessors must simply hear the confessions of sinners, and, after the latter have confessed their sins, they must ask them concerning the things which relate to the sin, as the preceding law has stated. But great care should be taken that pointed inquiries concerning the nature of the sin should not be made to them; but they should be asked in a general way how they have sinned. Moreover, care should be taken that those who confess are not inquired of concerning monstrous and unreasonable sins which men do not usually commit, because it may happen that through such inquiries they may be impelled to do certain things which they had not thought of before, or known. But where it happens that he who confesses is ignorant or bashful, and the priest sees in him certain indications that he was ashamed to tell, he can then question until he learns the truth of the sins which he is concealing; and, moreover, he can inquire of every man who comes to confession concerning sins which are common, as, for instance, pride, homicide, avarice, adultery, theft, perjury, false testimony, and other offences which men commit frequently, and, as it were, every day. Moreover, the confessor must direct him who confesses to seat himself humbly at the feet of the priest who confesses him every time he comes to perform Penance. Where, however, the Penitent is a woman, he must direct her to seat herself at one side of the confessor, and not very near him, nor in front of him, but so that he can hear her and not see her face; because the prophet Habbakuk says that the face of a woman is like a coal of fire which burns all who look closely at it. Wherefore, a priest, who should be on guard against committing any offence with women, must not see their faces, or anything else, for fear he may be induced to commit sin.

LAW XXVII.

Which Says That Every Christian Should Know the Pater Noster, The Ave Maria, and the Credo in Deum.

Ave Maria, *Pater Noster* and *Credo in Deum*, are words that are holy and of great virtue, and it is very proper for Christians to know them; because *Ave Maria* are the words with which the angel Gabriel saluted the Holy Virgin Mary when Our Lord Jesus Christ desired to become part of her flesh, and they are an expression of praise which is very pleasing to her, and possess great virtue, and by means of them men gain the favour of the Holy Virgin Mary; moreover, in the *Pater Noster*, are the seven petitions which Our Lord Jesus Christ imparted to Christians by whose means they might know how to implore his mercy: and in the *Credo in Deum* is contained the true belief of the Holy Catholic Faith, as it should be believed. For this reason priests who hear confessions should ask those who confess, if they are acquainted with the things mentioned in this law, and if they should say that they are not, they must explain them to them and advise them, and order them to learn them.

LAW XXVIII.

What Penance Should Be Imposed for Mortal Sin.

A double penalty is prescribed for mortal sin. One, for eternity in the other world, is for such as do not confess in this, when they had an opportunity to do so, or who do not repent as they should. The other is temporal, belongs to this world, and is imposed by him to whom the sinner confesses; and when this temporal Penance is so great that it completes the atonement of the sinner, so far as this world is concerned, he is released from the other which exists in the other world, and which he must undergo in Purgatory; but when it is not sufficiently great, and cannot be perfectly accomplished in this world, it necessarily results that he must complete it in the other by passing through Purgatory.

LAW XXIX.

Any Man Can Confess Another Who Is in Danger of Death.

If any man is ill, or there is any other need for haste which renders him anxious to repent more quickly than usual, or than he desired, he must first apply to the priest whose parishioner he is, as the seventh law before this prescribes. If, however, he should not be able to find him, he can confess to any other ecclesiastic, even though he might not be qualified to hear mass: and if he cannot find any priest at all, and the emergency is very pressing, he can then confess to a layman: and although the layman has not the power to absolve him from his sins, he will obtain pardon for them as well as from a man of God, by reason of his repentance, and by his willingness to confess to a priest if one could have been found. But if he should in the end escape the danger, he must subsequently confess to a priest, if he can find one. The confession which he made to the layman, however, will not avail him unless in an hour of great extremity, he not having been able to make it to a priest in the first place, as already stated.

LAW XXX.

Everyone Must Confess His Sins in His Own Proper Person, and Not by Means of a Letter, or Through the Medium of a Messenger.

No one, in order to confess his sins, must send either a messenger or a letter for that purpose; but he who commits the sin must acknowledge it by

his own mouth, unless he is not familiar with the language of him to whom he must confess, or he is afflicted with some illness, or some impediment should exist on account of which he cannot do so; then, in such a case, he can disclose his sins by means of writing, or tell them to another who knows his language, who may repeat them for him, both being in the presence of him to whom he desires to confess. That this should be done in this manner, Our Lord Jesus Christ revealed to us in the Gospel, when he healed the ten lepers and said to them: "Go and show yourselves to the priests"; and by this it is understood that he approved that each one should go by himself to disclose his sins, and not one in behalf of another. This also is proved by what the Apostle St. James said, namely, that men should confess their sins to one another.

LAW XXXI.

How Genuine Contrition Sometimes Avails as Much as Confession, Although a Man Does Not Confess, Not Having the Power to Do So.

Faith means that a man has firm belief in what he does not feel or see, this is the entire foundation and the root of all our goodness, and it is so excellent and so holy that it cannot be omitted in any of the Sacraments. And, although a man may accept them all, they will not avail for his salvation if he should not have faith, for by it he shall be saved. Therefore, God granted such great grace to sinners that whenever they are at the point of death and cannot find either priest or layman to whom to confess, having grief in their hearts on account of their sins, and trusting in God's mercy, in this faith they are undoubtedly saved from going to hell. Moreover, when anyone desires to confess who is dumb, or has lost his speech by reason of illness, or through a wound, or who does not know the language, or who is incapacitated in any other way, although a priest or a layman may be present to whom he might confess, as he cannot do so by speech, it is necessary that he give signs of repentance; as, for instance, he should write down his sins with his own hand, or raise his hands to God, or strike himself on the breast, or groan, or sigh, or weep. For if he should manifest any of these signs, or any others similar to them, he will be saved according to our Holy Catholic Faith. For this reason they should not forbid him any of the Sacraments, or any of the other benefits of the Holy Church, or refuse to administer them to him, just as if he had confessed by speech.

LAW XXXII.

He Who Asks Permission of His Parish Priest, or of His Superior to Go for Confession to Another, Must Give a Reason for Doing So.

Licentia in Latin, and permission in Castilian, are one and the same thing. And for the reason that it is declared in the preceding law that a man must ask his own priest when he goes to confess to another, the Holy Church deems it proper to show how this should be done, and this is the way. He must give some good reason why he should be permitted to do this, declaring that he thinks he will obtain better or more profitable advice for the benefit of his soul, concerning the sin which he has committed, from the other priest to whom he wishes to go, than from his own. Therefore, if he cannot give this reason, or another similar to it, the priest is not required to grant his request. If, however, after having given a good reason, the priest should not be willing to give permission, he can then apply to his superior; as, for instance, to the arch-priest, the arch-deacon, or the bishop, and if these should be so perverse as not to grant permission to him who asks it, and he knows that he will obtain

better advice from another, he can go, without their permission, to him to whom he desires to make his confession.

LAW XXXIII.

For What Reasons a Man Can Go for Confession to Another, Without the Permission of His Priest.

It is proper and right that a man who has committed a sin, in which both himself and the priest to whom he should confess are implicated, should go to another to make his confession, although his own priest should not be willing to allow him to do so. This would happen in the case of a woman who desires to confess, and the priest has sinned with her, or should endeavor to continue in his sin: or in the case of a man who has committed a sin with any female relative of the priest, or with the concubine¹ of the latter, or who should have killed or wounded any relation of his which has caused him much concern, on which account he is aware that the priest is greatly distressed; therefore, for any of the above mentioned reasons, or for any other like them, the party can confess to another, as is above stated. If however, anyone should ask such permission through malice or deceit, or from being ashamed to confess to said priest because he had afterwards again committed one of the same sins for which he had already been ordered to do Penance; or for the reason that he has a grudge against him without the other deserving it; or because he holds him in contempt, being of the opinion that he has not power to absolve him; when he requests permission for any one of these reasons, even though the priest should grant it to him, he deceives himself, and is greatly to blame since he should not ask permission under such circumstances.

LAW XXXIV.

Every Christian Should Confess at Least Once a Year, and to What Penalty He Is Liable Who Does Not Do So.

No one can be a perfect Christian man or woman, if after they are of age and know the difference between right and wrong, they do not confess to their priest at least once every year, revealing to him truly all their sins. Moreover, a Christian should receive the body of Our Lord Jesus Christ at least once a year, on Easter Sunday, which is the day of the Resurrection; unless he should fail to do so through the advice of his confessor. Anyone who does not do these things, as above stated, should be driven from the Church that he may not hear the service with other faithful Christians who belong to God: and when he dies he must not be buried like a Christian. And, in order that no one may be able to excuse himself by saying that he was ignorant of this, the priests must inform him that this rule has been established by the

¹ Concubinage was, during its early history, one of the recognized institutions of the Christian Church. For the first three centuries of its existence no records exist of any law commanding or encouraging celibacy, and the clergy of all ranks were freely permitted to contract marriage. The Spanish Church, long isolated from Rome through the domination of the Moors and the original independence of the Visigothic hierarchy, set at defiance the decrees of the Holy See in all matters relating to canonical law and ecclesiastical discipline. Priests and prelates married openly in the Peninsula until the thirteenth century, and, for generations afterward, ecclesiastics belonging to all orders lived in unconcealed concubinage. The excesses of some of these Holy Fathers afford a striking indication of the universal licentiousness of the times. In the household of almost every priest were domiciled several concubines, known to the Church under the term "*subintroductae mulieres*," and the harem of one reverend voluptuary, the Abbot of San Pelayo de Antealtaria, whose name has descended to posterity as the most notorious of his class, contained no less than seventy women. The keeping of mistresses, with its public toleration and numerous progeny, prevailed among eminent prelates even during the reign of the devout Isabella. The condition of other European countries subject to the See of Rome was no better, and was a general and silent protest against the extravagant doctrine of the value of virginity, a state lauded by early ascetics as indicating in its possessor a claim to almost divine reverence and attributes. Concubinage was not only permitted, but expressly sanctioned by the Canon Law. "*Is, qui non habet uxorem, & pro uxore concubinam habet, a communione non repellatur: tamen ut unus mulieris, aut uxoris, aut concubinae sit coniunctione contentus*." (Corp. Jur. Can. I, XXXIV, 4.)—Ed.

But see post 102-3 C. S. L.

Holy Church. But where anyone is in mortal sin, it is proper for him to use every exertion to escape from it as speedily as possible, because as this is something which he can accomplish.

LAW XXXV.

What Punishment a Priest Deserves Who Reveals the Sins Which Anyone Confesses to Him.

Any priest who reveals a secret of the king commits high treason, as we have stated in the Second Part, and is all the more culpable since it was communicated to God, as is the confession made to the priest who occupies His place, for such a person commits many and serious offences. First, he is a traitor to God, and is disobedient to the Holy Church; second, he is false to his neighbor, and, moreover, he is a homicide, for he puts discord among men, and gives them an example of evil, and is guilty of great perfidy by hindering men from serving God through making them afraid to confess. The Saints say of a person of this kind, that he resembles a deceitful man who breaks open a letter sealed with his lord's seal, or that of a friend who trusted him, confiding in his loyalty, for confession resembles the seal of secrecy, which protects what is written inside a letter, so that no one can know what it is. And the Holy Fathers enhanced its importance all the more when they declared that if any priest should be ordered by virtue of his vow of obedience to reveal what he had learned through the confession of anyone, he should not, for all that, divulge it, nor should he do so for the sake of any reward that might be given him, but he should rather say that he did not know; and he will speak the truth, for he did not know it as holding the place of man, but that of God: and if he should be put to death on that account he will become a martyr. Wherefore, a priest who reveals the confession of any person who has confessed to him by word of mouth, or by signs, or in any other way whatever, should be deposed, and shut up in some monastery, where he may perform Penance all his life. And this Penance the Holy Church approves instead of death, since it cannot put him to death in any other way.

LAW XXXVI.

How One Priest Can Ask Advice of Another Concerning Some Sin Which Has Been Confessed to Him, That He May Impose Penance for the Same.

Where one priest is compelled to ask advice of another by reason of his want of knowledge, on account of a sin which some one has mentioned in his confession, in order to ascertain what Penance he should impose upon him for it, the Holy Church declared that he should do this in such a way that the other would not know who it was who committed the sin: and if he should not do so, he must undergo the same penalty which the preceding law prescribes, in the case of one who divulges a confession. Where anyone confesses to a layman for any of the reasons which we have mentioned above, and he to whom the confession was made reveals any of the sins confessed to him, he must receive such punishment as will be thought proper in proportion to the importance of the matters which he revealed.

LAW XXXVII.**A Sick Person Ought Rather to Think of His Soul Than of Curing His Body;
and What Penalty a Physician Deserves Who Treats Him in
Any Other Way.**

A man should rather think of his soul than of his body, because it is more noble and precious. And, therefore, the Holy Church considers it right that when any Christian becomes so ill as to ask for a physician to attend him, the first thing the latter must do when he comes to him, is this: he must advise him to think of his soul, by confessing his sins. And after he has done so, and not before, the physician should treat his body, for it happens many times, that diseases increase in men much more, and grow worse, by reason of the sins that are in them. And that this is a fact, we have as an example the sick man whom Our Lord Jesus Christ healed, whose sins he pardoned first when he asked him to heal him, and he answered him in these words: "Go thy way, and henceforth do not desire to sin any more, because something worse than this may befall you." Wherefore, the Holy Church deemed it proper that no Christian physician should venture to treat a sick person, unless he had previously confessed; and that he who does otherwise, should be expelled from the Church, because he acted contrary to her prohibition. Moreover, the Holy Church forbids, under penalty of excommunication, that physicians, through their desire to cure the sick, should advise them to do something which may be a mortal sin. This is the case because souls are better and more precious than bodies.

LAW XXXVIII.**For What Reason Men Should Not Delay to Perform Penance.**

Sinners undoubtedly recover the favor of God which they have lost through mortal sin, by means of Penance which they have performed after Baptism, and, for this reason, and on account of the great benefit which results to men therefrom, they ought frequently to confess. For man ought not to put off anything which conducts him to the love of his Lord; and all the more, as it is this which acquires for him the love of God, improves his life, and saves his soul. For so great is His virtue and mercy, that He never despises the Penitence of sinners, although they may have committed many and great sins; provided that they perform it with good intentions and without deceit. And therefore every Christian ought to try to do this while he is in health for the reason that he is then more secure in mind and body. God will the better regard him if he did so at a time when he had the power to sin; for when a man defers performing Penance until he is sick, or old, it seems rather that his sins abandon him, than that he abandons his sins. And there is still another reason why men ought not to delay their Penance, that is, because disease afflicts them at times in such a way as to deprive them of memory, and they cannot confess as they ought. And, in addition to all this, it happens frequently that death comes so suddenly that they cannot perform Penance although they may desire to do so. But although men are to blame when they delay their repentance, they should not, on this account despair or fail to confess, for the mercy of God is greater than any sins which men do or can commit.

LAW XXXIX.**In What Ways Confessors Should Absolve the Sick Who Confess to Them As Well As Those Who Are in Danger of Death.**

Certain priests are without proper information, and do not know how to give advice or absolve those who confess to them, in order that the souls of such sinners may obtain salvation when they are afflicted with serious diseases, or with anything else, on account of which they are in danger of death. And, for this reason, the Holy Church explains in a manner which is clear, how a priest may know how to do this, and has directed him, when anyone is in such danger as has been mentioned, and after he has made his confession of sins, to absolve him by saying, that, by the power he derives from St. Peter and St. Paul he absolves him from all the sins which he has committed, so that, if he should die of that disease, he will not go to hell on account of said sin, and assures him that the masses, the prayers, the alms, and all the other good things done in his behalf will contribute to the salvation of his soul. But he must admonish him, that if he should be cured of that disease, he must come to him to receive the Penance which he will direct, or presently impose upon him, and which he thinks to be suitable, and that he must perform that Penance as soon as he recovers. But if it should happen that he can not come to him, he must order him to go to another, and disclose to him, as in the beginning, why, by all means, he should receive absolution for his sins.

LAW XL.**On the Good Deeds Which Men Do While in Mortal Sin, When They Are Profitable and When They Are Not.**

Ignorance often causes men to believe that they can obtain Paradise by means of good deeds which they commit while in mortal sin, wherefore, the Holy Fathers who have treated of this subject said there are certain acts that men do in this world which will aid them in obtaining Paradise, as, for instance, those which they perform when they are not in mortal sin. But all those which they perform while in this condition, although they will not profit them directly and enable them to obtain Paradise, will still avail them, and are beneficial; for the reason that God gives them, on this account, more temporal benefits and fewer punishments than they would otherwise have in this world, and besides assists them to escape more quickly from the sin in which they are and receive a reward from God, and forever accustom themselves to lead a good life.

LAW XLI.**What Good Acts Are Deadened by Means of Mortal Sin, and Are Revived After Penance Is Performed.**

Good acts which men commit while they are still in mortal sin are dead, for they cannot be saved by means of them in order to gain Paradise, as is stated in the preceding law. But where anyone has bestowed alms, or done other good works, not being at the time in mortal sin, and afterwards he should fall into it, all the good acts which he formerly did are invalidated, and will remain so as long as his sin endures; but, having emerged from it, those good acts at once revive, for the reason that he performed them before he sinned. For which reason all Christians ought to endeavor, as much as lies in their power, not to remain in mortal sin, because the good deeds which they then perform will not aid them in attaining the kingdom of God.

LAW XLII.**In What Way the Living Do Good Which May Benefit the Dead.**

Those who are living in this world ought to pray for the souls of the dead, for, on account of the good deeds which they do here on their behalf, God mitigates the punishment of those who are in hell, and liberates the sooner those who are in Purgatory, and conducts them into Paradise: although during their lives they may not have been able to perform the Penances imposed upon them. These good deeds are of four kinds: the sacrifices which the priests who say mass make, the prayers of saints, the alms of friends, and the fasts of relatives. The Holy Church prescribes these four kinds of good actions because they are more suitable than others. Friends ought to be diligent in these matters because they are more for the benefit of the dead than the lofty and decorated tombs which they erect for them, and other evidences of price, which it appears are made more for display and to gratify the living than for the profit of the dead: for it is no injury to good men if they should be buried in a vile manner, without worldly honors, and, on the other hand, neither pomp nor expensive burials made for wicked men are of any advantage to them.

LAW XLIII.**How Mourning for the Dead Is Not Beneficial, but Injurious.**

The pagans were men who entertained many kinds of beliefs, and there were many of them who believed that when a man died he perished entirely, soul as well as body. And on account of the despair in which they fell, believing that no one could rise again or be saved, they despised their souls, and did not desire to repent or to perform Penance for their souls, but mourned the dead greatly and immoderately. There were some who were not willing to eat or drink until they died; others killed themselves with their own hands; others became insane with grief; and those who did not go to such extremes as this, disheveled their hair and cut it off, and disfigured their faces by gashing them and scratching them; the devil, by driving them to despair, causing them to be afflicted with this blindness. But Our Lord desiring to rescue men from this error forbade it in the old law, when he spoke to Moses, and declared to him that Paradise was for those who did good, and hell for punishment of the wicked, and that all would rise again upon the Day of Judgment. For this reason he forbade that all these manifestations of grief should be displayed in the way in which other nations were accustomed to make them, and that the noble face of man which He created should not be disfigured. After this when our Lord Jesus Christ, who removed from this world the error and the ignorance in which men were living came, he also forbade in the new law that men should mourn for the dead. This was when he brought to life the widow's son, and said that they should not mourn for him: also when he brought to life the daughter of the chief of the synagogue he ordered that all those who were mourning for her in the house where she lay dead should be driven out, and he was not willing to bring her to life until this was done; and, for this reason, he gave us to understand that mourning did not profit the souls of the dead and was not pleasing to him, but that the good deeds which they did for their sake were of benefit to both. And afterwards, the Holy Fathers, who established many good regulations in the Holy Church, also ordained that there should be no mourning on their account, and they forbade it very decidedly because great injury, without any benefit, resulted therefrom. Wherefore the Apostle St. Paul said, that there should be no grieving for those who die, as is done by other people who have no hope in the Resurrection. For those

who die are not lost, according to the Catholic Faith, but are like such as pass from one place to another: for those who do good go to Paradise, and all others undergo the punishment of Purgatory, or hell.

LAW XLIV.

What Punishment Those Who Mourn for the Dead Are Liable to, According to the Holy Church.

To injure the face and disfigure it, on account of the dead, is something which the Holy Church regards as very irrational. For this reason certain of the Holy Fathers imposed special penalties upon such as did these things; forbidding priests to administer to them the Sacraments of the Holy Church, or admit them during the canonical hours, until they had recovered from the marks which they had made on their faces, and compelling them to do Penance for this, unless they were afflicted with some serious disease, or some other misfortune on account of which they were at the point of death; for, at such a time, the Sacraments should not be refused to any Christian. Moreover, they directed, that when priests brought the cross to a house where a person lay dying, or to the church, no one should utter cries: and if they should hear people uttering them, or singing songs in praise of the dead, they must return with the cross, and not enter the house. And besides all this, they ordained that when a dead person was brought into the church, no one should make any noise, and if he did, they must stop saying mass, for all should be silent there, and pray to God and listen to the prayers said by the priest; and this is done that no one may disturb the divine service especially while mass is being said, and the body and blood of Our Lord Jesus Christ consecrated, for so noble and so holy is this that all other things should be suspended on its account: and that anyone who acts contrary to this, whether he be priest or layman, must be ejected from the Church. They also directed that if anyone should make a disturbance while the body was being removed to the Church or to the grave, the priest must stop the burial service until the person was silent. They also ordained that if anyone should kiss a corpse, or throw himself upon the bed with it, he must fast eight days upon bread and water, and should not be received in the Church for the space of one month; and they also forbade that when a corpse was taken into the church it should have its face uncovered; and this was done lest men looking upon it might be so moved to pity as to mourn greatly on its account.

LAW XLV.

On the Remission of Sins, in How Many Ways the Holy Church Grants It, Whom It Profits, and Whom It Does Not.

The Holy Church grants remission of sins in two ways, one which a priest imparts in the penances he imposes upon those who confess to him; the other which an archbishop grants to such as we have need of aid to erect churches, or consecrate them, or to build bridges, or for other good objects; and the absolution which a bishop gives is of benefit to the persons of his own bishopric, but not to those belonging to others, unless the bishop of the place where the absolution is given should grant it to them. Absolutions granted by archbishops, however, apply to all those in their jurisdiction. Those which the Pope grants are valid all over the world, but, when an archbishop or bishop desires to grant absolution, he cannot do so for a longer time than the space of forty days, except when a Church is consecrated, in which case he can give a year, and no more, whether the absolutions are one or many in number. And

all these absolutions which bishops and higher prelates grant are valid in accordance with the terms with which they confer them. For, in whatever way a man makes atonement for his sins, (as the Holy Church commands), he becomes free from them, and those whom the Church absolves are pardoned, and moreover those whom She binds are bound, by reason of the power which Our Lord Jesus Christ bestowed upon her.

LAW XLVI.

What Benefit Accrues to Men from Absolution Granted Them.

The Holy Church grants plenary absolution and remission of sins to Christians, as is stated in the preceding law. And, for the reason that many men are in doubt concerning them, and do not know the great benefit resulting therefrom, the Holy Fathers desired to explain it. They declared that every time a Christian frankly confessed his sins, those to whom he confessed should direct him in what way atonement must be made for them; and they should give him as many days of absolution as those by which Our Lord Jesus Christ lightened and diminished their own sins, through the Penance which he received, and was required to perform, in this world and in Purgatory. This applies to such as come repentant when absolution is given them, and it must be done as quickly as possible after it is granted. For so great was the pity of Our Lord Jesus Christ which he entertained toward sinners, and the mercy which he wished to show them, that although in this world they might not be able to complete their Penance, they will not, for that reason, be lost, except they die in mortal sin.

LAW XLVII.

On the Fourth Sacrament, Which Is the Sacrifice of the Body of Our Lord Jesus Christ.

God undoubtedly pardons Christian sinners by means of the Sacraments which they receive from the Holy Church, and, even without this, he gives them grace to do good. Among all the Sacraments the greatest and most holy is that of the body of Our Lord Jesus Christ, which is consecrated during the mass: for if the other Sacraments assist man in being saved, this one bestows upon him the grace of God, and maintains him in good standing. Wherefore, the Holy Church enumerates what things priests should observe in the ceremony of the mass, when they say it, in order that it may be said in a holy manner. And, for the reason that the greater efficacy is in the consecration of the body of Our Lord Jesus Christ, since all other things which are said and sung during the ceremony are done in its honor, no priest can say mass who has not been qualified as the Holy Church commands, and priests are required to say it during canonical and stated hours, as, for instance, the third, the sixth, and the ninth hour. It must be said at the third hour on holidays; at the sixth hour on days which are not holidays; at the ninth hour in Lent, and during the vigils of the saints which are the fast days; and, moreover, on the four Ember Days, except on the Saturdays when the Holy Orders are conferred, or Baptism administered, on the evening before Easter, or during Pentecost; for, on these occasions, although they are fast days, priests can begin mass before the hour of nine, because the service to be conducted at those times is of an extraordinary character. And when they desire to say mass at these hours they must ring the bell, in order that people may know and come to hear it.

LAW XLVIII.**For What Reasons Mass Is Said at Specified Hours.**

The Holy Fathers appointed certain hours for saying mass, and gave special reasons why this should be so. They declared that it is said at the third hour, because at that time the Jews petitioned Pilate to send Our Lord Jesus Christ to be crucified, and he was then scourged: moreover, at that hour the Holy Spirit descended upon the Apostles, on the day of Pentecost. It is said at the sixth hour, because at that time Christ was placed on the cross. It is said at the ninth hour, because Jesus Christ, being then upon the cross, gave up the ghost, and the earth trembled, and the Sun was darkened: and, moreover, at that hour, on the day he ascended into heaven he was with his Apostles. However, although these are special times for saying mass, other and private masses can be said before and after these hours until the ninth hour; and this is the case on account of the labor which men have to perform, and by reason of other causes of delay whereby they are prevented from coming at the times aforesaid. And it is proper that every Christian should see the body of Our Lord Jesus Christ every day, if he is well and able to do so.

LAW XLIX.**A Priest Ought Not to Say More Than One Mass During the Day.**

A priest should not say more than one mass during the day, for he is very fortunate if he can say one in a worthy manner. Nevertheless, on Christmas, he can say mass three times, first, at midnight; second, when dawn begins to break; and third at the third hour. The Holy Church did not establish this regulation without reason, for by the first mass which is said at night, is understood the condition of men before the law was given, when all were in darkness; wherefore prophecy declares with regard to the mass that the peoples of all nations who were in darkness saw a great light. By the second, which is said at the appearance of light, or at dawn, is signified the time in which men were under the law which Our Lord God gave to Moses; for at that time arose the knowledge of Our Lord Jesus Christ through the sayings and the law and the prophets, but not in a perfect manner; and with this meaning mass is said between day and night, and the service begins with, "Light will shine to-day." And by the one that is said at the third hour is understood the time of grace, which is that when Our Lord Jesus Christ came, and people were enlightened, and soon recognized him truly as God and man: and for this reason the service of the mass begins with, "A child is born unto us, and a Son given us."

LAW L.**For What Reasons Priests May Say Two Masses in One Day.**

A priest may say two masses in one day for other reasons than those which we have stated in the preceding law. This, for instance, would be the case where, after mass had been said, someone should die who had to be buried; or when it happens to be the anniversary of someone's death when mass must be said; or a mass or requiem should be said for the dead; or, if after the mass of the day had been said, some eminent man, as, for instance, the King, or a Bishop, or some other prelate, or some nobleman the Lord of the land, should desire to hear it; or where the Holy Body of the Lord is not at hand to be administered to a sick person, so that he may not die without communion. Or also where two betrothed persons desire to be married, and there is no

other priest to perform the ceremony. For any one of these reasons a priest can say two masses in one day; but, if, during the first one, all the wine which is poured over the fingers when they are washed after the body of Our Lord has been received, was exhausted, the priest cannot afterwards say the second mass. The reason for this is that he would not be fasting, for, in order to receive the bread and wine which is the body and blood of Jesus Christ, when it is consecrated, a man must not break his fast; and this is because it is not the body, but the soul which is eaten. Moreover, he who chants the mass, must not do so alone, but must have one companion, at least, with him to assist him.

LAW LI.

Men Must Not Omit the Ordinary Masses of the Day for Private Ones.

It was ordained in the Holy Church by the Holy Fathers that a priest should not say more than one mass, unless upon stated days and for special reasons, as has been mentioned in the preceding law; and also that this should be appropriate to the day, as, for instance, Sunday, or the four Ember Days, or Lent, or some other time which has its proper service, in accordance with which he must say the mass, whether it is a festival or not. And, for this reason, the Holy Church reproves such as prefer to hear other masses than those above mentioned; as, for instance, that of the Trinity, or of the Holy Spirit, or any others; because they err, and are ill-informed, thinking that it is better to hear these masses than the others established by the Holy Fathers. And not only does the Holy Church reprove such as have the habit of hearing these masses but also those who desire to hear the Gospel of, *In principio erat Verbum*, every day, thinking that it is an improvement to hear this Gospel rather than another.

LAW LII.

What Things Are Necessary in the Sacrament of Our Lord Jesus Christ.

A priest should not consecrate the body of Our Lord Jesus Christ when he says mass, without having at hand three things, namely: bread, wine, and water. The bread, which is called the Host, must be made of wheat flour mixed up with water alone, without yeast or any other substance whatever; and the priest must make it in a very cleanly manner. He must not put wine alone into the chalice, but water also, and must mix them both together. This is done because blood and water issued from the side of Our Lord Jesus Christ when they struck him with the lance. He must use more wine than water. This bread is really changed into the body of Our Lord Jesus Christ, and the wine and water into his blood, by the power of God and by the holy words that the priest repeats, which Our Lord Jesus Christ spoke on Holy Thursday when he took bread and wine and said to the Apostles: "This is my body and my blood," and when the priest says these words, he must raise the Host, that the people may see it, and all must kneel down and raise their hands to heaven, and say: "I adore Thee, O, Jesus Christ, and I bless Thy Holy Name, because Thou hast redeemed the world by Thy body and by Thy blood;" or they may repeat another prayer from among those which it is usual to say on that occasion.

LAW LIII.

For What Reason Water and Wine Must Be Mingled in the Chalice.

The priest must mix water and wine in the chalice when he wishes to consecrate the body of Our Lord Jesus Christ, and this is done for the follow-

ing reason: By the wine, the Holy Church understands the blood of Our Lord Jesus Christ, and by the water, the Christian people; and thus, when water is mingled with the wine, it signifies that faithful Christians are united to him in belief. Wherefore, the priest should not make this Sacrament unless with both wine and water, for, if he should make it with wine and not mingle water with it, it would signify that Our Lord was separated from his people; or if water alone without wine were used, it would mean that the Christian people were beginning to be separated from him, and therefore the sacrifice must be made with both wine and water. For which reason a priest who makes a separation of this kind commits a great sin, and he should not afterwards presume to make a sacrifice of the body and blood of Our Lord Jesus Christ, without previously performing a severe Penance on account of the sin which he committed.

LAW LIV.

Here It Is Stated by Whom This Sacrifice Was First Established, and in What Way, and by Means of What Words, It Was Done.

Jesus Christ, our true God and man, when he wished to suffer death in order to save the world, himself first established this sacrifice on Holy Thursday, when he supped with his disciples, and taking bread and wine in his hands spoke to them as follows: "This is my body and my blood, shed for you, do this in remembrance of me": and, for this reason, the Church observed this custom every day afterwards, that men might have pardon for the sins which they continually commit. And, even without taking into consideration the words which he uttered on that day, he had said previously to his disciples: "I am the living bread which came down from heaven, and he who eats of this bread shall live forever, and the bread which I will give for the life of the world is my flesh."

LAW LV.

For What Reason the Priest Divides the Host Into Three Parts, After It Has Been Consecrated.

The priest divides the Host into three parts after it has been consecrated, two of which he holds in his hands, and the third he puts into the blood which he consecrated. And of the two which he holds in his hands, one is given for the purpose of thanks to God for those who are in Paradise; the second to implore him in behalf of those who are in Purgatory; the third, which he puts into the blood, is by way of invocation for those who are in this world, so that God may pardon their sins.

LAW LVI.

Of What Metals the Chalices for the Performance of the Sacrifice Should Be Made.

The vessels with which the sacrifice of the body of Our Lord Jesus Christ is performed are called chalices. And although, in the beginning of the Faith, the Holy Fathers were accustomed to make vessels of wood, and of glass, the Holy Church subsequently did not approve that the sacrifice should be performed by means of such as these, for the following reasons: A wooden chalice is not as dense as a metal one, and becomes penetrated with what is placed in it, and for this reason there might remain in it some of the blood of Jesus Christ, if the priest could not swallow it all as he should do; and, moreover, it could not be thoroughly washed without something remaining in it. More-

over, the Holy Church did not approve that the vessel should be made of glass, because it is brittle and easily broken, and can be upset and its contents spilled. In order to avoid these dangers it was decided that the sacrifice should only be made with chalices of gold or silver; and this was done in honor of Our Lord Jesus Christ, and of his Holy body, and the good order of the Holy Church: but in poor churches which cannot have chalices of this kind, they can use others made of tin. But of no other metal can they, or should they, have them made, except of those three above mentioned. If they were made of iron they could not be easily cleaned. Nor should they be made of copper, or brass, because these are metals which, when used to drink from, provoke a desire to vomit, which must be carefully guarded against, so that it may not happen to him who receives the body and blood of Our Lord Jesus Christ. Nor should they be made of lead, because it is black, and always stains, and cannot be easily cleaned.

LAW LVII.

How the Corporals Should Be Made.

The white cloths which are placed over the chalice, and with which it is covered when the priest performs the Sacrament of the Body of God, are called corporals. These should not be made of silk or of colored cloth, but of pure, white linen. This is done symbolically, because Our Lord Jesus Christ was wrapped in linen cloths when they deposited him in the sepulchre, by which is meant the chalice. By the altar, is understood the cross upon which he was placed. The corporals which we have mentioned must be blessed by the bishop before he says mass with them.

LAW LVIII.

What the Mass Is, and Why It Is So Called.

The service which priests perform when they consecrate the body and blood of Our Lord Jesus Christ, is called the mass. The mass means something sent, and it is so named for four reasons; first, because the people send to the priest to pray God for them; second, because God actually sends his angels there to receive the prayers of the people; third, because God the Father sent his Son into this world to be born of the Virgin Mary and redeem us, which is commemorated on the altar; fourth, because Jesus Christ was sent from this world to the Father, to pray to him in behalf of men that he might pardon them. Wherefore, the priest says at the end of the mass: "*Ite Missa est*," which means: "Go faithful Christians, for the Host is sent to heaven, and perform good works, that you may deserve to go there when you die."

LAW LIX.

In What Way Mass Is Concluded.

The mass is concluded in one of three ways, by the priest saying at the end of it either: "*Ite, Missa est*," or "*Benedicamus Domino*," or "*Requiescant in pace*." This is not done without reason, for on festival days when they chant *Te Deum laudamus*, *Gloria in excelsis Deo*, and *Hallelujah*, he must say, "*Ite, Missa est*"; and when the priest says this he must turn towards the people, and all who are in the church must answer: "*Deo gratias*." On ordinary days he must say, "*Benedicamus Domino*," and the priest and the people must answer, "*Deo gratias*." By this is understood the benediction which our Lord Jesus Christ gave to his disciples when he ascended into heaven, and which he will

give on the Day of Judgment to the good, when he will say to them: "Come blessed, and receive the kingdom of my Father, prepared for you from the beginning of the world." The third way in which the mass is concluded is when a requiem is chanted for the souls of the dead, and the priest says in conclusion: "*Requiescant in pace*," which means to say "May they rest in peace," and the others should answer, "Amen." By each one of the three ways above mentioned in which the mass is concluded, it is understood that the priest dismisses those who are in the church, so that they may go, and any one who departs before this is said does wrong, and is guilty of an insult to his prelate or priest; unless he has already heard another mass, or unless he should do so for some unavoidable cause.

LAW LX.

How Priests Should Carry the Body of the Lord to the Sick.

Priests should have the body of Our Lord Jesus Christ always consecrated, in order to administer to the sick or to others who may have need of it: and, as we explained in former laws what things are necessary to consecrate it, the Holy Church has deemed it proper to show how it should be kept. She ordered that when they wished to put it away, they should handle it in a very humble manner and with great reverence, and should deposit it in a clean and secluded receptacle which can be locked with a key, so that no one can have access to it, in order to do it harm. Moreover, She commanded that the chrism should be kept in the same manner, and that priests who did not thus take care of it should be deprived of the right to officiate and of their benefices for three months, and if, through their fault, because they did not take good care of it, any offence should be committed against it, their superior must impose upon them a still greater penalty, such as may seem reasonable to him.

LAW LXI.

How Priests Ought to Care for the Body of the Lord Intended for the Benefit of the Sick.

Where anyone who desires to communicate is sick, he must send information of the fact to the officiating priest, in order that he may bring him the Body of the Lord, and the priest himself must carry it to him: and if he should not be able to do so by reason of illness, or on account of any other great misfortune which may have come upon him, he can then send it to the sick person by the hands of a deacon, but not by any other man, or woman; and, when he wishes to carry it, he must put on a very clean surplice, and carry it reverentially and with great fear before his breast, it being covered with a clean cloth; and he must cause a lighted taper to be borne before it, to let it be understood that the Host which he is carrying is the true and enduring light. He must also take with him a cross, and holy water, and a bell that should be rung, that all may understand they should humiliate themselves before God in their hearts, and the Faith increase in them. This is the way in which he must proceed until he reaches the sick man, and after he has administered communion to him, he himself must return to the Church, and replace the same chalice or reliquary in which they carried the body of the Lord, and must not give it to another, that he may carry it.

LAW LXII.**How Christians Should Humble Themselves Before the Body of Christ, When It is Carried to the Sick.**

Christians ought to earnestly endeavor to serve Our Lord Jesus Christ in mind and deed, and this they cannot do perfectly unless they fear and honor him in every way in their power. For this reason the Holy Church considered it proper that as Christians must bend the knee and pray in a very humble manner when they elevate the body of Christ in the church, they should do so in the same way whenever they carry it outside of the church, in order to administer the sacrament to a sick person. Therefore, We, Don Alfonso, King, for the honor of the body of Our Lord Jesus Christ, do now command, that hereafter any Christians who meet the Host must accompany it at least to the end of the street where they encounter it, and this also all others present must do, until the priest arrives at the house where the person is to whom they are about to administer the sacrament. If any of those persons should be on horseback, they must dismount, but if this happens in such a place that they cannot do so, they must withdraw, so that the priest may pass through the street without hindrance. For if men chance to meet the temporal king anywhere, the latter being on foot, and dismount to do him honor, how much more ought they do honor to Our Lord Jesus Christ, who is King over all kings, and Lord over heaven and earth. But if the place is such, that none of the above named things can be done there, they must show their respect in some other manner, and display the greatest reverence and humility possible. Every Christian who does not do this, will commit a great sin against God and the Faith, will offer a bad example, and be guilty of an offense for which he will deserve severe punishment if it should be proved against him.

LAW LXIII.**How Jews and Moors Should Act, When They Meet the Body of the Lord.**

It happens sometimes that Jews and Moors meet the Body of the Lord, while it is being carried to administer the sacrament to some sick person, as is stated in the preceding law: and for this reason we decree that any such persons, or anyone else, who does not belong to our religion, or who does not believe in it, who meets the body of Christ, will do well to humble himself, as Christians do, because this and no other is the true Faith. But if he should not be willing to do so, we direct that he leave the street, in order that the priest may pass freely through it, and whoever does not do so shall be imprisoned for three days by the judge of the district where this took place, after he has been proved guilty. If he should violate this law a second time, we direct that the penalty be doubled, and that he lie in jail for six days; and if he still does not repent and should repeat the offence a third time, we order that he be arrested and be brought before the King, that he may inflict what punishment he may deem right for such an act, if, however, the King should be at such a distance from the place that this cannot be done, the guilty party must be securely guarded until the King is informed, in order that he may inflict upon the culprit the penalty he deserves, and this we command for two reasons: First, that the Jews and the Moors may not be able to say that they are wrongfully subjected to injury in our dominions; second, that the judges, or those whose duty it is to try them, may not advise them to do wrong, through a wish to obtain their property, or on account of the pleasure they may derive in inflicting corporeal injury upon them by reason of the hatred they bear them. The above named penalty is understood to apply only to

such Moors and Jews as are residents of our kingdom. Where they are foreigners, coming from some other country, and unacquainted with this law, we do not approve of their being molested; for they do not deserve punishment, unless some of them should know the law and should violate it maliciously.

LAW LXIV.

Priests Must Keep the Churches, and All the Other Things Which Are Necessary for the Serving of God, Clean.

Priests must keep clean, and in order, the churches and all other things necessary for the service of God in them, as, for instance, the chalices, the crosses, the vestments in which they conduct the service and all the cloths with which they adorn the altars and the walls. For, since the body of Our Lord Jesus Christ is consecrated in the church, it is proper that all the things which are necessary for the service should be very clean and in good condition. And the priests must not give the vestments necessary for the service of the church to men who may make use of them for other and vain purposes: and when it becomes necessary to wash the vestments which have been blessed, the deacons, and others of less rank in the church, must do this; the priest must wash the corporals, in basins which are very clean and which must be always kept for this purpose, and not used for any other whatever: and when such cloths become old or torn, so that they are not suitable for use, they must be burned, and cannot be sold, or given away, or put to any other use for the service of men, for what is set apart for the service of God should not afterwards serve for any other purpose. This must be observed in order that God may not be enraged against the people, and cease to uphold them, as happened to King Belshazzar, who took the vessels and other things belonging to the Temple of Jerusalem, and made use of them himself, as he should not have done, and for this reason Our Lord God destroyed him, and placed his kingdom in the power of his enemies.

LAW LXV.

Concerning the Relics of the Saints, and How They Should Be Honored and Cared For.

Those precious things which the Holy Church keeps in order and reverences, as the preceding law stated, are called ornaments. But those to which the greatest honor is shown (with the exception of the body of Our Lord Jesus Christ), are the relics of the Saints whose bodies were canonized, which means that they were declared to be Saints. This cannot be done except by the Holy Church of Rome, and, above all other relics, those of Our Lord Jesus Christ, and those of his mother, Holy Mary, should be preserved with the greatest care. All these relics must be kept in a clean and highly honorable place, they must be treated with the greatest respect, and kept under lock and key so that no one can steal them, or take them, to have them in his possession, or obtain them in any other way without the consent of those who have charge of them. And they must not be removed from the places where they are kept in order to earn anything by means of them, or for the purpose of selling them, for no one can obtain Holy things for a price, and therefore they cannot be sold, since no one can give in exchange for them anything of equal value. And although in temporal matters anything is considered worth the price it is sold for, this is not the case with spiritual objects, wherefore anyone who sells the latter commits mortal sin, and is guilty of simony.

LAW LXVI.**Those Upon Whom Apostolic Authority Confers the Dignity of Saint Must Be Well Tried and of Very Eminent Character.**

The word saint means confirmed in good, and this confirmation is understood to relate to the faith they had, and the good works which they performed in it, by which they attained to a secure state of glory which is unchangeable. For men who are such as these in their lives deserve to be called saints after death. No one, however, can bear this name without the permission of the Church of Rome, for the Apostolic Authority must order, in the first place, that information be given concerning the life of him who is a candidate for the honor of Saint; whether he endured many hardships for the love of God, whether he lived in chastity, and performed other good works: and it must also be learned if he was of good report in the land in which he dwelt, and whether he was gentle, humble, and without guile; for upon such persons as these God bestows his grace. Moreover, inquiries should be made, whether he was persecuted on account of the love of God, and for defending the Faith: and also whether he performed miracles during his life and after his death, and if so, what they were. And when all these things and others of the same nature have been ascertained with certainty from the people, the Apostolic Authority, with the advice of the cardinals, may declare him to be a holy man, and communicate this publicly to the prelates and all other good men present without delay, in order that they may be witnesses. His festival should also be appointed with its canonical hours, and the order given to inscribe his name in the martyrology. A person of this description is called a canonized Saint.

LAW LXVII.**What Difference Exists Between Things Which Are Done by Nature, and Those Accomplished by Miracles.**

Nature is the act of God, and he is the Lord and maker of it, for God does all that can be done by Nature, and other things besides which the power of Nature cannot effect; for Nature cannot cease, or turn aside from action according to the positive regulation which God imposed upon it; as, for instance, to produce night and day, cold and heat, and also to prevent the seasons from failing to return at their proper times, according to the certain motions of heaven and the stars, upon which God conferred the virtue and power of regulating Nature. Moreover, it cannot do otherwise than to allow what is heavy to descend, and what is light to rise. For this reason Aristotle said that Nature cannot be made to act in a contrary way, and this means that she always observes one method and one certain order in which to act. Moreover, it cannot make something out of nothing, but everything that is made by it must be composed of something else: as, for instance, of one element or another, or of all the four elements from which are created all simple and compound things. God, however does all this, and can do even more, contrary to this rule, as, for instance, to cause the Sun, which rises in the east and sets in the west, to turn back to the east in the same path before it sets, as it did through the prayer of Ezekiel, when the sun turned back fifteen degrees. And he can even cause an eclipse when the sun and the moon are in apposition, as was the case on the day of the passion of Jesus Christ; and he can bring the dead to life, and give sight to him who has never seen, as when he raised Lazarus from the dead, and made a man see who was born blind. Moreover, he can create all things out of nothing, for he made the world, the angels, the heavens and the stars, which were not formed of the elements, or

in any other way, and each day he creates intelligent souls which belong to men. This power is peculiarly that of God, and when it is manifested by Him the act is called a miracle, because when it happens it is a marvelous thing both to men and nations; and this is the case because nations see every day the acts of Nature, and therefore when anything is done contrary to her laws, they wonder from whence it is derived, and especially when it takes place rarely; for then they marvel at it as something new and strange; and of this the wise man spoke, and with reason said; "A miracle is something which we see but do not know whence it comes." This is understood to apply to the people in general, but wise men and educated persons well understand that anything that Nature cannot do, or the skill of man accomplish, is derived solely from the power of God and from no other source.

LAW LXVIII.

What Things Are Necessary to a Miracle in Order to Render It Genuine.

A miracle, that is to say a marvelous work of God, surpasses what is done by Nature every day, and for this reason it does not often occur. That it may be accepted as true it must possess four things in itself: first, it must come through the power of God, and not through craft; second, the miracle must be contrary to the laws of Nature, for under other circumstances men would not marvel at it; third, it must be produced by reason of the merits of the sanctity and excellence of him by whose instrumentality God performs it; fourth, the miracle must relate to something which may tend to the confirmation of the Faith.

LAW LXIX.

On the Fifth Sacrament, Which Is Extreme Unction Administered to the Sick.

When anyone is ill of a disease, which afflicts him so that his life is despaired of, he should be anointed with the holy oil called the Oil of the Sick, because it is used to anoint the latter during illness, when they are about to die. This Sacrament is called in Latin, *Extrema-Unctio*, which means the last anointing, because all Christians receive it at the end of their lives. The Apostle James ordered this to be done, and that priests qualified to say mass should do it, for his Epistle says: "If any one among you should be sick, send for the priest of the Church to pray over him, and anoint him with oil in the name of God." This Unction must be made on seven parts of the body, namely, the eyes, the ears, the nostrils, the mouth, the hands, the feet, the loins of men, and the navels of women: with the repetition of the words ordinarily said at such times. This anointing is done in these places because these are the members with which men sin the most.

LAW LXX.

In Which It Is Stated That All Christians Must Receive Unction and What Benefits They Derive From It.

Every Christian qualified to receive the Sacrament of Unction which is administered to the sick, as stated in the preceding law, must receive it, and cannot excuse himself from accepting it, for, if he should do so, thereby showing it want of respect, he will commit a mortal sin from the effects of which he cannot be saved. Those who receive this Unction derive from it three benefits; first, God gives them greater grace to fear him, and to repent of the sins which they have committed; second, it diminishes the number of their sins, or it removes from them all those called venial, as is shown above in the

laws which treat of this subject; third, it alleviates their diseases, and gives them strength not to fear death, and comforts them that they may recover more quickly.

LAW LXXI.

To Whom the Sacrament of Unction Should Not Be Administered.

Every man or woman who has lost his or her mind is called insane, and this happens in two ways, for there are some who never possessed it, and there are others who possessed it and lost it through disease, or by means of a wound or some other accident: for which reason anyone who, at the hour of his death, has become insane in this way, ought not to be given the Sacrament of Unction. He who was never in possession of his intellect never could commit sin, and, for this reason, has no need of this Sacrament. If, however, anyone who has lost his mind asked for this Unction before he lost it, it should be administered to him. This also must be done if he should recover his understanding after he lost it, and should ask for Unction, and we decree that if any child become ill before he can sin he should not be anointed, for the same reason which we have stated in regard to insane persons.

LAW LXXII.

On the Sixth Sacrament, Which Is the Order of the Clergy; and on the Seventh, Which Is the Sacrament Which Men Receive Voluntarily.

Full explanation has been made in the above named laws of the five Sacraments, as the Holy Church explains them, concerning which we have made mention in the beginning of this Title. And for the reason that the sixth Sacrament, which consists of the order of the clergy, is explained in the first and second Titles, which follow the one treating of the prelates and other priests of the Holy Church; and, moreover, because the seventh Sacrament, which is that of marriage, is explained in the fourth book, relating to betrothals and marriages; we have not deemed it proper to speak here of these subjects, in order that we may not repeat our statements. But he who desires to know the laws relating to these two Sacraments will find them fully set forth in the places above mentioned.

LAW LXXIII.

What Punishment Those Deserve Who Do Not Believe In, or Who Deny, the Sacraments of the Holy Church.

Christians who are unwilling to believe in, or who deny the Sacraments of the Holy Church which we have explained in the laws of this Title, deserve to suffer severe punishment. For since they bear the name of Christians they should be such in faith and works; and therefore any Christian who does not believe in these Sacraments, as the Holy Church commands, should suffer the punishment prescribed for heretics, concerning which we have spoken in the seventh Part of this book.

TITLE V.

On the Prelates of the Holy Church, Whose Duty It Is to Expound the Faith and Administer the Sacraments.

We have spoken in the two preceding Titles of the Faith and the Sacraments of the Holy Church, and how all ought to receive them, as the Holy Fathers have ordained; and now we wish to speak in this Title of the persons whose duty it is to expound the Faith and administer the Sacraments. Such persons are the prelates of the Holy Church, whose duty it is to explain and to preach it according to the ordinances of the religion of Our Lord Jesus Christ, and who are required to punish men for the sins which they commit. For this reason we desire to state here why they are so called; why it is proper that they should have the positions which they hold; what authority they possess in the Holy Church; how they should be elected, or the impediments to their election removed, as well as what kind of men they should be; what things they have to do by reason of their offices, and what they have not; in what matters they may be excused from obedience to their superiors, and in what cases this happens, and in what cases it does not; what superiority in rank some prelates have over others, and, above all, how they ought to be honored and respected. In the first place we will commence with the Pope, because he is highest, and then we will speak of all the others, each one according to his rank.

LAW I.

What Bishop or Prelate Means, and What Positions Bishops Occupy in the Holy Church.

Prelate means a person of high rank in the Holy Church, and of these the most honored are the bishops, for while there is the Pope, and there are patriarchs, archbishops and primates, as has been previously stated, nevertheless all these are bishops, although they have other names. A bishop means a keeper. For, without doubt, they are appointed to guard the Catholic Faith, since they occupy the place of the Apostles and have the same power which Our Lord Jesus Christ conferred upon the latter, when he said to them: "What you bind on earth shall be bound in heaven, and what you loose on earth shall be loosed in heaven"; and these are, as it were, the pillars of the Holy Church, by means of which the Faith is sustained, for they, more than other prelates are required to preach and expound it to the people, and to defend it by argument against heretics and all such as desire to oppose it, and, for this reason, He said to them: "You are the light of the world. For as light enlightens, and enables those who are in darkness to see, so preaching demonstrates and explains the truth to those who do not know it," and he said to them also: "Ye are the salt of the earth" for as salt gives greater savour to that with which it is mingled, and preserves it from spoiling, so that no maggots may breed in it, or, if they are there already, it kills them; so the words of God impart to men the desire to love Him and to avoid committing sin, and either kills, or does not permit heretics or any persons who desire to injure the Church to be fostered. By this power which God conferred upon the Apostles, and in which He manifested such great love for them that he said to them that they were not his servants, but his friends, and not mere guests, or acquaintances, but rather members of his own household, to whom he gave the power of knowing the secrets of his acts, and for this reason said to them: "To you is given the power to know and to thoroughly understand the force of the words of God."

Wherefore we should consider bishops as saints, and obey and honor them as persons who occupy the place of the Apostles.

LAW II.

Why It Is Proper That There Should Be a Pope.

It was proper, for a just reason, that when Our Lord Jesus Christ ascended into heaven, St. Peter, to whom he had given superior rank among the Apostles and the power to loose and to bind, should remain in his stead, in order to have charge of his commandments, and cause men to keep them. And although the Faith which he gave us is of itself, very holy and noble, yet such is the natural weakness of men that if there was no one to guide them and show them the way in it, they will err, so that the excellence of the Faith will not profit them; so, for this reason, St. Peter remained in His place, and, after the latter died, it became necessary that others should have their turns, so that there might always be one in whom His power would remain, and this is he whom they designate the Apostolic Authority, or Pope.

LAW III.

What Honor and Power the Pope Has More Than Other Bishops.

The Pope of Rome is a bishop, just like one of the others, as was stated in the third law preceding this one. We desire, however, to explain here why he is so called, and what honor and power he has more than the others; and for this reason we said that the word Pope means, one who occupies the place of the Apostle. And, although the other bishops may stand in the place of the Apostles, as has already been stated, yet because he especially occupies the place of St. Peter, whom God advanced in rank over the Apostles, for this reason he, and not the others, is called Apostolic: for although Our Lord Jesus Christ said to the Apostles that he would make them fishers of men, and that they should throw their nets into the sea; this merely meant that he would enable them to secure sinners through preaching, and that, by means of it he would draw them from their sins, just as fishermen draw fish out of the sea by means of a net. Moreover, he ordered St. Peter, especially, to guide them to what was exalted, by which he indicated that he gave him superiority over others. And there was great justice in thus advancing him, for he showed himself prominent in loyalty when he said to Jesus Christ: "Thou art the Christ the Son of the living God," and thereupon the latter answered: "Thou art Peter," which means firm in belief, because he believed without any doubt whatever, and declared that he was the Son of God. Moreover, he said to him: "Thou shalt be called Cephas," which means the head: for, as the head is over all the other members, so was St. Peter superior to all the Apostles, and for this reason is called their chief; and therefore the Pope occupies the place of St. Peter, and is at the head of all the bishops, as St. Peter was over all the Apostles. Although every bishop occupies the place of our Lord Jesus Christ, and is the Vicar of all belonging to his bishopric, by reason of his power to bind and to loose, the Pope is especially the Vicar of Jesus Christ throughout the whole world.

LAW IV.

What the Word Pope Means.

He who possesses the Apostolic Authority also bears the name of Pope, which means in Greek, Father of Fathers. And this is the case because all bishops are spiritually called Fathers, and he above all others, and for this reason he is so named. For, as the power which is over all things of the

world, is united and confirmed in God, from whom it is derived; so, on the other hand, the power which prelates derive from the Holy Church is united and strengthened in the Pope from whom they receive it. For this reason it is proper that these two names, Pope and Apostolic Authority, should be united in one person, who is the head of all the other prelates, as has been stated. Therefore the Apostolic Authority should be greatly honored and respected, as one who is the Father of souls, and the Lord, and the perserver of the Faith, and on this account all Christians in the world, when they visit him, kiss his foot. For which reason anyone who says, stating it as his belief, that the Pope does not possess the powers which we have mentioned here, or that he is not the head of the Holy Church, unless he has already been excommunicated, must undergo this penalty as an confessed heretic.

LAW V.

What Superiority the Pope Has Over Other Bishops.

The Pope has supremacy over other prelates both in power and in deed, for he can depose them for cause and afterwards restore them to the same condition in which they formerly were, should he so desire. He can also change a bishop, or one who has been elected and confirmed, from one church to another. If a bishop, or one who has been elected and confirmed, desires to relinquish his bishopric during his life, he can not do so without an order of the Pope. Moreover, he can remove any bishop from the power of his archbishop, or his patriarch, or primate, if he desires to do so, or he can remove an abbot from the control of an archbishop, or from that of any other prelate who is his superior in rank. He can also restore priests, whom their bishops have deprived of orders, to the condition in which they formerly were. And, in another respect, he has great preeminence, for, if any doubt should arise as to his peculiar authority, no one has the right to resolve it but himself. He can also change a bishop from one place to another, and he can make two bishoprics out of one, or one out of two, having some good reason for doing so; if it may be for the benefit of the country, or in compliance with a request of the King. He has also the power to make one bishop obey another, and to compel him to do this where it was never done before; and he can absolve men from vows which they made to go to Jerusalem, or on other pilgrimages, ordering them to do other good works instead of these. He has also authority to release men from oaths which they have made, in order that they may not, by means of them, commit perjury, which will result in injury to their souls. He can also grant dispensations to the children of priests and those of other men, born out of wedlock, and to boys under age, in order that they may receive holy orders, and have benefices and dignities in the Holy Church. He can convoke a General Council, composed entirely of bishops and other prelates, whenever he wishes to do so. He can also summon the princes of the earth to come, or send suitable representatives to discuss matters relating to the defence of the Faith, or to its advancement. He has likewise power to publish ordinances and decrees for the honor of the Church and the benefit of Christianity in spiritual affairs, and all Christians are required to observe them. He can also, at his pleasure, deprive priests of the benefices and rights which they possess in the Church. He has the power to give, and to promise by his letter, any office or benefice of the Holy Church before he who holds it dies, or relinquishes it. He can absolve such as others excommunicate, but no one can absolve anyone whom he has excommunicated, unless this is done by his own command, or where the excommunicated person is at the point of death; then the priest can absolve him. Moreover, when the Pope sends his epistle to anyone, by which he confers power upon him to decide a dispute, and the latter excom-

municates a party because he refused to obey his decision, and the party should have been excommunicated for the space of a year from that time; no one can absolve him except the Pope, or some one to whom he gives authority, and no one can appeal from the decision which he rendered. Moreover, no one can interfere with appeals which men make to the Pope, except he himself, or some one he commands to do so; or with such as he has ordered, either by his word or by his epistle to be decided, and, after they have been heard, the decision must be communicated to him: nor has any prelate authority to hear a case concerning which doubt may arise, on account of which those who hear it may communicate it to the Pope. Moreover, whatever he decrees with respect to that part of the mass, known as the Epistle, no one else can decree concerning that known as the Gospel, or vice-versa; unless it be some one who did so by his order. He alone has power to bestow the pallium on patriarchs, primates, and archbishops, than whom no others are superior in rank. He also can grant a dispensation to receive holy orders to a man who had two legal wives of whom both were virgins, or one a widow. And when an ecclesiastic who has been ordained subdeacon, or who has a higher office, marries a widow, which he cannot lawfully do; the Pope has power to grant him a dispensation, that he may be restored to the order which he formerly possessed, and receive others of higher degree. He can also grant dispensations to priests, of whatever rank they be, to hold several benefices, although they may be such as have the care of souls. He can grant a dispensation to a priest, to hold two offices, or two kinds of benefices, or even more. He can also wear a pallium, every time he says mass, which other prelates cannot do, although they may have it, except at appointed seasons, or in certain places, according as the Pope by his authority, confers this power upon them. Moreover, he can order the Epistle to be read on Sundays and on other great festivals, which other prelates can only do, on days which are especially indicated. If the Pope speaks to an excommunicated person, knowing that he was such, and sends him a letter of greeting, wishing him to be absolved, although he does not say so in the letter, he is absolved solely by the words which he spoke to him, or by the greetings which he sent to him in the letter: and this no other prelate can do. Moreover, in every dispute concerning the Holy Church an appeal can at once, and in the first place, be made to the Pope, leaving all other prelates out of consideration. And he has power to do still more, for if any priest who has been excommunicated, should receive a holy order, or should conduct the service by discharging the duties of his office as he did before excommunication, he, or anyone he directs, and no one else, can absolve him. Where the Pope creates a cardinal, a legate, or any other official, sends him on a mission, and confers upon him general powers concerning the things he is to do, but does not especially mention one of the matters aforesaid in which the Pope has pre-eminence over other bishops, the envoy cannot act with regard to it, and, if he should do so, his act will not be valid. Moreover, all disputes of a serious nature which arise in the Holy Church, must be referred to him for his decision; as, for instance, where a doubt arises with regard to the Articles of Faith, or any other matters of an important character. He alone can grant dispensations to priests who commit simony by giving something to their bishop to induce him to ordain them.

LAW VI.

For What Things It Was Never the Custom of the Pope to Grant Dispensations to Priests.

It has never been the custom in the Holy Church for the Pope to grant dispensations to such priests as fall into the sin of heresy, if, while still in it, they

received the ordination which they would have obtained before this happened; nor to such as had been knowingly baptized twice; nor to those who receive orders from heretic bishops to the injury of the Catholic Faith: nor to such as give anything to a bishop to induce him to ordain them, although it was stated in the preceding law that he can do so if he wishes; nor, moreover, is it the custom for him to grant dispensations to such as intentionally commit homicide.

LAW VII.

How the Election of the Pope Should Be Conducted.

The election of the Pope should be conducted in a reverent manner like that of any other bishop, for, although he may have all the powers and privileges which we have mentioned, by reason of the spiritual position which he holds, for all that, he whom the Pope may desire, or choose during his lifetime is not entitled to the place, but he whom the cardinals elect after his death. If, however, in the election of the Pope a want of agreement should arise, so that one part of the cardinals select one person and another another, the law of the Holy Church commands that all Christians should recognize as Pope whomever two-thirds of the cardinals elect. But if the Church should decide to do this in another manner, then all we Christians should acquiesce, no matter in what way it was done, since this is an affair relating solely to the Church, because it is of a spiritual nature.

LAW VIII.

How the Pope Should Be Honored and Respected.

By honoring the Pope, Christians honor Jesus Christ whose Vicar he is, and they also honor all the Apostles, and especially St. Peter, who was the greatest of them and whose place he occupies, and they likewise honor all Christianity, whose head he is, as the regulator and defender of the Faith; and whoever is guilty of dishonor towards him dishonors all those whom we have mentioned. Therefore, all Christians should honor and love him, in the three following ways: that is, in will, word, and deed. The first of these, which relates to the will, indicates that they should believe that he is the head of Christendom, and the teacher of the Faith of our Lord Jesus Christ, since Christians are saved through obedience to his commands. The second, which relates to the word, means that they should honor him by calling him Holy Father, and Lord. The third relating to the deed, signifies that when any persons visit him, they must kiss his foot, and that they must honor him in all respects more than any other man.

LAW IX.

What the Words Patriarch and Primate Mean, Why It Is Proper That Such Officials Exist, and What Positions They Hold.

The word Patriarch signifies chief of the Fathers, by which is meant the archbishops and bishops; for *Pater* in Latin, is the same as father, and *Archas*, in Greek, has the same meaning as prince, which is chief in our language, and this agrees with what the prophet David said: "Thou dost appoint them princes over all the earth"; which means, make them heads of all the earth, which, in fact, prelates are in spiritual matters. And primate signifies the first after the Pope, and he holds the same rank as the patriarch, although the names are different; and it is proper in every respect that there should be patriarchs and primates, who may take the place of the Pope in their respective patriarchates, as the Pope is but one person, and cannot accomplish everything proper for him to do by reason of his office.

LAW X.**What Power a Patriarch and a Primate Have Over the Archbishops of Their Patriarchate.**

A patriarch has great authority over all the archbishops of his patriarchate, for he is their common judge and can summon them before him, and lawfully decide any dispute one archbishop may have with another, or which any other man may have with any of them. He has also the power to investigate any election which they jointly hold, and determine whether it was properly conducted, or not, and afterwards to confirm it, if it is good, or to reject it if it is evil. And if, after the person elected has been confirmed by the archbishop, he should not be willing to ask for his consecration until three months have elapsed, he must lose his office, and the patriarch can then make provision for the church, with the consent of the Pope, if the elected person had no good excuse for such a long delay. If two were chosen, and a dispute should have arisen over the election, he can hear it and decide it, and can consecrate the person whom he finds has been properly elected, if he should be such a one as the law deems worthy. Moreover, when no election is held until three full months have elapsed after the death of its archbishop, the patriarch can then provide the church with an archbishop because the electors were negligent in not being willing to choose one during that time. He has even greater power than this, for if it is the custom of his church for archbishops alone to appoint to benefices which may be vacant, and if an archbishop and his chapter, together, do not appoint to them for six full months, the patriarch can do so; and also where an archbishop is discredited and his infamy comes to his knowledge, his patriarch can inquire into it, and, according to the information he obtains, can communicate the facts to the Pope, that he may do in the matter what he should do according to law; for, in a case of this kind, no one, except the Pope, can render judgment. Moreover, we declare that after a patriarch has been consecrated and has received the pallium, he can call the archbishops into council in order to advise with them concerning the government of his patriarchate. However, although he has power over the archbishops who are under him, he has none over the bishops who are subject to the archbishops except in eight different matters which are set forth in the following law. Whatever we have said concerning the patriarchate applies also to the primacy, since they are one and the same office, as has been previously stated.

LAW XI.**In What Cases Patriarchs and Primates Have Power Over the Bishops Who Belong to the Archbishops Subject to Them.**

There are eight matters in which patriarchs and primates have authority over the bishops belonging to the archbishoprics which are subject to them. The first is, where a bishop has a case before his archbishop and is wronged in any way, for he can then appeal to the patriarch or to the primate who is the superior of the said archbishop. The second is, where the Chapter of any church requests the patriarch or the primate, after the death of their archbishop, to settle any matters in their church or in the province which pertained to the duties of the deceased archbishop who had authority over them, for then either of them can do so. The third is, where the Pope confers the right on a patriarch or primate to do certain things, or establish certain regulations, in addition to those which he has a common lawful right to do in the provinces of those archbishoprics over which he has jurisdiction; or where they, or those who preceded them, obtained this privilege through practice

or custom of very long duration, as the law commands. The fourth is, where an archbishop summons his bishops to a General Council, and a doubt arises among them with regard to some matter concerning which they should ask advice of their patriarch or primate, he can then establish a rule, or direct how the doubtful question shall be decided. The fifth is, where a patriarch or primate knows that the archbishop has neglected to punish and correct the offences which take place in his province, for then either of them can do so. The sixth is, where a bishop, or some other person, complains to the patriarch or primate of his archbishop in that province, for he should then be the judge of the case, as stated in the preceding law. The seventh is, when anyone complains to the primate or the patriarch, stating that his archbishop excommunicated him without good cause, and he sends him to the said archbishop, directing him to absolve him, then if he is unwilling to obey his order, he himself can absolve him; and, after he has been absolved, he should direct him to go to the archbishop in order that he may make reparation to him for the fault for which he excommunicated him; and, if he refuses to make amends in this way, he can excommunicate him a second time. The eighth is, where an archbishop orders something unlawful to be publicly done against a bishop, or any other person whomsoever over whom he has authority, and the latter considering himself aggrieved, appeals to the Pope; but, before he makes the appeal, goes to the patriarch or primate and complains of the matter concerning which he considers himself aggrieved, he can then send his letter to the said archbishop, stating in it that he appealed according to law, and until the appeal is decided he must not bring in any new charge against the party who appealed.

LAW XII.

How Many Churches There Are in a Patriarchate, and What Preeminence Some Have Over Others.

Formerly there were four Churches over which there were patriarchs: the first was Constantinople, the second Alexandria, the third Antioch, the fourth Jerusalem. There are also two other patriarchates, one of Aquileia, the other of Grandesser. The first four however, have precedence over the others in two things; first, in that each of the patriarchs of these four churches can bestow the pallium on their archbishops after they have been consecrated, and they themselves have received it from the Pope; second, in that they are entitled to have the cross borne before them wherever they go, except in the city of Rome, or in any other place whatever where the Pope or any cardinal may be to whom the Pope has deputed his power, and ordered him to make use of the honored insignia which the Emperor Constantine bestowed on Pope St. Sylvester; that is to say, the scarlet garments, or the white palfrey, or the canopy carried over him. The other two, however, who are styled patriarchs of the above named Churches, have not authority to do these things, unless the Pope should grant it to one of them as his especial privilege.

LAW XIII.

What Things Patriarchs and Primates Can Do in Their Respective Provinces.

Every primate and patriarch has special authority to do certain things within the limits of his patriarchate, as, for instance, to consecrate churches, and erect new altars in them. They can also bless chalices, consecrate altars, make the chrism on Holy Thursday, and receive into the Church on that day those who perform solemn Penance. They also have power to confirm with

chrism those who were baptized, whenever they desire to do so, and to ordain priests on the four Ember Days, which are fast days; and on the Saturdays of these four Ember Days they can confer holy orders, but not at any other time except on the Saturday sacred to Lazarus, and on the day of the vigil of the Resurrection, or on the morning of the Sundays following these six Saturdays, when some impediment exists which prevents the patriarchs from conferring the orders; for the reason that they could not complete the ceremony on Saturday; as, for instance, on account of the great number of priests, or when they do not feel well, or for any other good reason. The patriarch, however, or those whom he ordains must not do this without fasting until the next day, when the conferring of the orders may be finished. Moreover, they have power to dismiss the priests of their patriarchates, when the latter desire to go and take up their residence elsewhere, and to give them their letters for this purpose. They also have authority to sit in judgment on their priests and on laymen in matters relating to the decisions of the Holy Church. They have authority to excommunicate, by extinguishing tapers and ringing bells, which other priests cannot do, except archbishops or bishops. And, in any place where there is not more than one church, they have power to establish two, it being understood that this is necessary on account of the great number of people, and this he can do by dividing the parishioners. They can consolidate two churches into one and unite all the parishioners of both, when they see that it is necessary on account of their poverty. They can make one church subject to another, and build new churches. They must not do these four things however, without good reason, but, always, when they do them, attention must be paid to the pleasure of those whose benefit is concerned, as well as to the injury that may result to the neighborhood, as has been stated in the Title which treats of the right of foundation. They have authority to pardon those who fall into the sin of heresy, and to impose Penance upon them, as the Holy Church commands. They can also make agreements containing the penalty of excommunication, concerning those over whom they have authority. These particular acts and many others, each of the patriarchs and primates can perform in his patriarchate.

LAW XIV.

What Acts Patriarchs and Primates Can Perform Outside Their Patriarchates.

Patriarchs and primates have authority to bless the vestments of the Holy Church, as well as the corporals, crosses, chalices, and bells. They can also consecrate altars in the jurisdiction of others, as well as in their own. None of the acts, however, mentioned in the preceding law can be performed by any of them, except in his own patriarchate, unless with the consent of the prelate of that locality, or of some one else acting in his stead. The things mentioned in this law which should be blessed, the patriarch or the primate can bless in the church, or in his dwelling, or anywhere else, where it is suitable to do so. These acts should not be performed, however, while riding or walking, but while standing still, and they can be performed on any day. Moreover, when any part of the country where bishoprics formerly existed (or even where they have not existed) has been recently conquered, the patriarch or primate who happens to be there at the time, has, in compliance with the request of the King or of the lord who conquered it, to consecrate, bless, ordain, and reconcile the churches, or rebuild them, and perform all those acts which we have mentioned; but he does not obtain, by means of this, any greater authority over such churches than he previously had, unless the Pope should afterwards confer it upon him.

LAW XV.**What the Word Archbishop Means, Why Such An Office Should Exist, What Authority He Has, and What Position He Occupies.**

The word archbishop means chief of the bishops, and as the patriarch and primate have authority over the archbishops in their patriarchates, as well as over the lands belonging to them, as is above stated; so, in the same way, archbishops have authority over the bishops in their provinces, where these same matters are concerned. But although they have power over the bishops in the manner already stated, for all that, they do not have it over those subject to the bishops, except in those matters where patriarchs possess it over such bishops as are suffragans of the archbishops and belong to their patriarchate, as has been mentioned. These same acts which the patriarch has power to perform in his patriarchate, the archbishop can also perform in his archbishopric, and in the same manner as above stated. And, for the reason that the patriarch or primate is only one person, and cannot accomplish all that pertains to his office which is to be done in his province, it was proper that there should be archbishops to act in his stead in matters which he could not fully carry out.

LAW XVI.**What the Word Bishop Means, What Position He Occupies, What Authority He Possesses, and Why It Is Proper that the Office Should Exist.**

The word bishop means superintendent, and the name is employed for the reason that he must exert himself in overseeing all those in his bishopric, by watching over their souls. He has authority, in temporal as well as spiritual matters, over the priests of his bishopric, and over laymen in spiritual matters. He can perform all the acts performed by an archbishop, except that he is not entitled to wear the pallium as the latter does, unless the Pope should grant it to him as his special privilege. Moreover, he cannot convoke a council, as the archbishop can, but he has authority to summon a synod, which means an assembly, once a year, which is composed of the abbots, priors, and priests of his bishopric: and since an archbishop cannot do everything relating to the duties of his office because he is but one man, it was proper for that reason that there should be bishops who might act in his stead and occupy his place, (each one in his own bishopric) in such matters as the archbishop could not fully accomplish.

LAW XVII.**In What Way All the Above Named Prelates Should Be Chosen.**

The word election, in Latin, means choice in Castilian, and for this reason the Holy Church directs that prelates be chosen with great care, as those who are to occupy the place of the Apostles in the land. The following is the manner in which this election should be held: When a Church is vacant, that is to say has no prelate, its dean and canons must meet, and summon their companions in the province and the kingdom, according to the custom prevailing in that church, to assemble upon an appointed day to hold an election. The time in which this should be done is within three months, at the latest, from the day on which the prelate died. If it should not be done within that period they lose the power of election for that time, and it becomes vested in the prelate of highest rank who is nearest at hand, and whom they are required by law to obey. The day on which the election is appointed they must chant the mass *Sancti Spiritus* in order that God may guide them to act for the best;

and they must then enter their chapter-house and hold their election in one of the three following ways; the first of which is called, "Scrutiny"; the second, "Compromise"; the third, "Holy Spirit."

LAW XVIII.

What Rights the Kings of Spain Possess with Regard to the Election of Prelates, and for What Reasons.

There was an ancient custom of Spain, which still prevails, that when the bishop of any place died, the dean and the canons communicated the fact to the King by means of their church messengers, who carried a letter from the dean and chapter stating that their prelate was dead, and that they asked him to permit them to hold an election without hindrance, and that they did surrender to him the property of the church: and, when this is done, the King should grant their request, and send and collect his dues, and after the election has been held, he directs them to present to him the person chosen, and orders that what he received be delivered to him. This preeminence and honor the kings of Spain enjoy for three reasons; first, because they conquered the country of the Moors, turned their mosques into churches, banished from them the name of Mohammed, and placed there the name of our Lord Jesus Christ; second, because they founded churches in localities where none ever previously existed; third, because they endowed them, and, in addition to this, conferred many favors upon them; so, for this reason, kings have the right to be petitioned by chapters in the matter of their election, and to have their request complied with.¹

LAW XIX.

In What Way an Election Is Conducted by Scrutiny.

The first kind of election is called, in Latin, Scrutiny, which means inquiry, and this is conducted in the following manner. Three good men of the chapter whom all agree upon, are chosen, and these three must question one another in turn, as to whom he desires to be made bishop, until each one has declared his choice. They must also ask, separately, each member of the chapter who is his choice for bishop; then every one of them must write down with his own hand and disclose the name of the person whom he prefers, and if he does not know how to write, another can do this at his request, he being one of those who are questioned; and, when this inquiry has been made, what has been written must be read in the chapter, and if all have agreed upon one person, they must order one of themselves to elect for himself and all the others: but if they should disagree, because one party favors one person and another party another, the choice of the majority should be ascertained, and, if it can be lawfully done, their power should be delegated to one to choose for all those who select him for this purpose, as is above stated, and an election held in this way shall be valid.

¹ This privilege of the Spanish kings, which amounted practically to a confirmation of the election of the prelates of the Church, represented but a small part of the extraordinary authority enjoyed by their predecessors under the Visigothic domination. The latter presided over the ecclesiastical Councils, and possessed the rights of appointment, translation, and investiture. These powers elsewhere classed among the most jealously guarded prerogatives of the papacy, were, after the Moorish conquest, assumed by the khalifa, and their exercise produced an extraordinary and anomalous condition in the ecclesiastical affairs of the Peninsula. The idea of a Moslem prince, to whom it would be a compliment to apply the epithet of heretic, performing the functions of the head of the Church, was of itself preposterous, and without precedent in the annals of Christianity. As might have been expected under such circumstances, the most flagrant abuses prevailed. Simony became notorious and unconcealed. Misbelievers, and men of profligate character were raised to the most important episcopal dignities, which were openly sold to the highest bidder. Under fraudulent pretexts valuable property was confiscated. The frequent contests and brawls of the opposing candidates for the lucrative offices of the hierarchy were a public scandal. The most singular thing of all was that no opposition or protest appears in any of the ecclesiastical writers of the time against a condition which threatened the integrity and very existence of their organization.—Ed.

LAW XX.**In What Way the Election Called Compromise Is Held.**

The second kind of election is called, in Latin, compromise, which means promise of concord. This takes place when a chapter agrees upon one, or three, or more, and delegates to them its power, promising that they will accept as bishop whomever they elect, or whom all, or the majority of them, agree upon. These, however, after they have agreed upon the party whom they desire to elect, must delegate their authority to one of their number, that he may elect the candidate for himself as well as in the capacity of representative of all the others, as the preceding law declares. An election thus held will be valid, just as is the other called Scrutiny.

LAW XXI.**How the Election Called That of the Holy Spirit Is Held.**

The Holy Spirit is so noble and so sacred that it brings to agreement and unites the divided opinions of men. For this reason, the third kind of election is called that of the Holy Spirit. And this is held when ecclesiastics enter their chapter to hold an election, and, while they are there in deliberation, one of them nominates a person whom he declares it would be well to elect, and having named him, all the others agree with him, or all agree together at one time with one voice: and this election is considered more noble than the others, because no one but the Holy Spirit alone influences the wills of those present, and there is no need of either of the other two above named methods, that is to say, those of Scrutiny or of Compromise. And, in whatever way they all happen to agree upon one person they must appoint one of themselves to elect by his own voice, and by that of the entire chapter him upon whom they agree, and the latter is chosen by the grace of the Holy Spirit, and the election thus held is valid; and one held in any other way, except these three which have been mentioned, will be void. Moreover, the Holy Church deemed it proper that the elections by which prelates of inferior rank, whether regular or secular, are chosen, should be held in the three ways which have been mentioned.

LAW XXII.**What Qualifications Those Who Are to Be Elected Bishops, as Well as the Other Prelates of Higher Rank of Whom We Have Spoken Above, Must Possess.**

No one should be elected a bishop, or a prelate of higher rank whom we have mentioned above, unless he is an educated man. He should not, however, be rejected for the reason that he is not possessed of great learning, but he must have an ordinary education, so that he can discharge his duties. Moreover, no one should be elected who has not reached the full age of thirty years; nor one who is not the son of a married woman; nor one who has been excommunicated or suspended by the Holy Church, or placed under an interdict; nor one who has not observed an interdict. This, however, is to be understood to apply where this disability exists at the time of the election; for if it had occurred previously and the time had expired, it would not be an impediment. Moreover, a bishop cannot be elected, nor one already elected consecrated, by another Church; nor by a layman; nor by any priest who is not, at least, a sub-deacon; nor by a heretic; nor by anyone who has been instrumental in causing discord to arise between Christians belonging to the Church of Rome, by producing any division among them; nor by anyone living an immoral life;

or who is of bad repute, or considered wicked by reason of some act he had committed, or some judgment which he had rendered against a person over whom he had jurisdiction, and this is the case as because of any one of these things he would be a man of evil reputation.

LAW XXIII.

What Other Persons Should Not Be Elected Bishops.

A person recently converted from another religion ought not to be made a bishop, and this for two reasons; one, lest he become proud from thinking that the Christians had great difficulty in finding anyone as good as he, because they had to elect him; the other, because he is not confirmed in the Faith, or familiar with the condition of the Church, for he would not then know how to conduct himself in his intercourse with the men of the bishopric in accordance with their behavior; and this is also the case with anyone who has lately taken holy orders, for he should not be made an abbot, or prior, or prelate of higher rank, for these same reasons. The Holy Church also deemed it advisable that although a secular priest might be humble in character, and well versed in the rules of any order, he could not be elected abbot; for it was not enough that he was so informed, but he must have experienced the discipline of the order, and the order must have tested him. Anyone, however, who has been a monk, can be elected bishop, and not only is it forbidden to elect as bishop anyone newly converted to the Faith, but no holy order should be conferred upon him, not even one of the inferior ones, of which there are four grades, until he has been tried, and, although certain laymen, who were uneducated, were chosen bishops in former times, that was more through a miracle of God, and on account of the excellence of their characters, than for any other reason. Thus, this happened to St. Nicholas, when a voice from heaven directed a bishop that he should go to the door of the church, and the first person he met should be accepted as bishop. It also happened in the case of St. Severus, who was entering the church at a time when the priests were about to hold an election, and a dove came and perched upon his head, and they saw that it was a sign of God, and made him bishop. This also happened in the case of St. Ambrose, who had not been baptized, but the earth rose with him like a chair in which he was seated, and for this reason they accepted him as bishop. No one should be made bishop, on account of such extraordinary occurrences, who is not educated, or has not been baptized, unless the virtue of God should be manifested, as it was to those above named and to others who were good men and saints. Moreover, although the person elected may be worthy of being a bishop, his election will not be valid if all or any of those who elected him were excommunicated or suspended, or under an interdict, or should elect him contrary to the prohibition of the Pope.¹

LAW XXIV.

What Persons Should Be Petitioned for as Bishops, and to Whom the Petition Should Be Presented, Before They Are Elected.

A petition means a request, and is another way to create a prelate, and this should not be done except in the case of such as are not eligible on account of some special impediment, or, for instance, where the party has not attained

¹ These provisions are very similar to those of the Canon Law. The general requisites ordinarily presumed to be indispensable to candidates for ecclesiastical preferment are the same in both. "*Præsentî decreto statuimus, ut nullus in Episcopum eligatur, nisi qui iam trigessimum annum ætatis exegerit & de legitimo matrimonio sit natus, qui etiam vita & scientia commendabilis demonstretur.*"

(Corp. Jur. Canon. II, VI, 7.)—Ed.

the full age of thirty years; and also in the case of such as have not received at least the order of subdeacon; or have not been born in lawful wedlock; or do not possess the education which bishops should have. Moreover, a petition may be presented for one who is the bishop of another church, or one who is elected and confirmed, or an educated layman, provided no other impediment exists. Those of the chapter who draw up these petitions must present them to the Pope and to no one else, and although the party interested gains no right by the petition to ask for the bishopric, the Pope should do him the favor to grant it to him, provided he is such a person as merits it; and if he should not do so, both the candidate and those who offered the petition will suffer great wrong. Moreover, when a monk, a canon, or any other person belonging to the regular clergy is elected, permission must be asked of his abbot or prior, or some other of his superiors in rank of the order to which he belongs.

LAW XXV.

How Many Petitioners There Must Be in Order That a Petition May Be Valid.

Discord arises at times when a bishop is to be chosen, so that some elect one person, and others draw up a petition for another; and, in a case like this, the Holy Church deemed it proper in order that the petition might be valid, that those who signed it should consist of at least two-thirds of the chapter, and that the person petitioned for should be worthy of the office. If the petitioners should not number two-thirds, the election made by the others shall be valid, provided only that the person elected is worthy of the office for which he was chosen.

LAW XXVI.

What Penalty Those Must Suffer Who Elect Persons Who Are Not Eligible.

Those are certainly guilty and should be punished, who knowingly elect as bishop any of the persons declared by the preceding laws to be ineligible; and the Holy Church ordained that such as held an election in this way should lose, for the space of three years, the income of the benefices which they held; that the election so conducted should not be valid, and that the persons aforesaid could not afterwards elect another bishop. They also considered it just that when anyone gives or promises money, or anything else, as an inducement for his election, and is elected by this means, he should, for that reason, lose the bishopric; and that whatever he gave should belong to the church which he wronged by giving it; and that this should be the case where another party gave it for him, whether he himself was aware of it or not. Moreover, those who accept anything as an inducement for the election of another, must surrender it all to the church where election was held, along with an equal amount of their own property, and, in addition to this, he who received the bribe must remain forever of evil repute.

LAW XXVII.

What the Electors and the Persons Elected Should Do, After the Election Is Concluded.

The election being over, the chapter must draw up its letter called a decree, which means a confirmation of its act, and in which it is stated that, during the time their church was vacant, the members of the chapter summoned all those that had the right to, and could be, present, and appointed a day to hold the election; and that upon that same day they deemed it proper to choose one of

the three forms of election above stated, and that they elected such-and-such a person. This document they must send to the Pope, if the election was that of a patriarch, or that of a primate, archbishop or a bishop, not subject to another ecclesiastic of superior rank. If the election was that of an archbishop, subject to a patriarch or a primate; or of a bishop, subject to archbishop, they must send the document to him. If the person elected is such a man as the law requires, and no error was committed in the form of his election, he must be confirmed; and if after his confirmation, he should not ask to be consecrated for the space of six months, his superior can remove him from his bishopric, because he kept the church vacant for that time. But, if before this time, or even afterwards, he should come to ask consecration, the delay not resulting on his account, or on account of the other whose duty it is to consecrate him, but for some lawful impediment by which either of them was hindered, he must then be consecrated.

LAW XXVIII.

How the Consecration of Bishops Is Performed.

Any elected ecclesiastic who is to be consecrated must have with him his superior in rank, who is to perform the ceremony, and two other bishops; and where it happens that the former cannot be present at the consecration, he must ask some other prelate who may be in his neighborhood, in order that no less than three bishops be present. They must be of this number for the following reasons: in the first place, through reverence for the Holy Trinity, and this is eminently proper; and also on account of the ordinance of the Holy Church, for She deemed it right that they should be of that number, in imitation of the first archbishop in Jerusalem, who was St. James the Apostle, styled The Just; and whom they called the brother of our Lord Jesus Christ, because he resembled him, and who was the son of the sister of the Holy Virgin Mary. He was consecrated by St. Peter, the chief of the Apostles, and there were with him at the consecration, St. James the elder, and St. John his brother, the sons of Zebedee. For these reasons it is proper that three bishops should be present, and no fewer; and the consecration must be public, so that anyone who wishes to oppose it may be heard before the consecration, with regard to the reasons why he desires to accuse the candidate. And if they should consecrate him, or order him to be consecrated, before the case involving the accusation is decided, the accused person, along with those who consecrate him, his superior and the others, shall lose their bishoprics. The consecration must be performed in the church of the superior of the person elected, or in some other church of the province, or wherever he who has to perform it deems it proper to have it done. But patriarchs, primates, and archbishops, who are not subject to any superior, cannot be consecrated by anyone but the Pope, or by some one whom he appoints, according to the custom of the Church of Rome.

LAW XXIX.

What Prelates Should Do After Receiving Consecration.

Bishops, and other prelates of higher rank must immediately return to their churches, after being consecrated, and should not leave their churches or their bishoprics to go to another country without good reason. And when, under such circumstances, they are compelled to go, they must do so with the permission of their superior, and must not remain away from their bishoprics more than a year: and if they should do so, their revenues should not be sent to them, unless they stay at the court of Rome by order of the Pope. None of

them must contract debts equal in amount to the annual incomes which they derive from their bishoprics; and this is for the reason that, while dwelling there, they may go more in debt than their churches can pay; wherefore the latter fall into great poverty, and, for a long time, cannot regain the condition in which they formerly were, and sometimes churches are ruined by this means. From this source four evils arise; the first results in the dishonor of the Holy Church, when the bishop goes about like a beggar; the second, because, on account of his poverty, he is forced to dismiss his priests, not only those of his own church but the others throughout his bishopric, and this is done many times unjustly; the third, because it results in the injury of the people, for those who are the vassals of the church are taxed more than they should be, and others receive less property and fewer honors than they are entitled to from the church, as well as fewer emoluments than they should have from it; as, for instance, those obtained from the service, burials, and other ceremonies which can be forbidden by interdict or excommunication; the fourth, because it causes disparagement of the Church of Rome and of the kings and lords of the land, since they cannot receive from the prelates those rights and honors which are due them; and, in addition to this, they are forced at times to pay out their own money to discharge the debts of the churches. For the reasons above stated prelates should be very careful not to abandon their churches. But if one of them should undergo some great misfortune on account of which he was compelled to abandon his church, (as, for instance, if the enemies of the Faith should conquer the country) he can then go to another church without permission of his superior, until his own is recovered and placed again in the power of Christians.

LAW XXX.

What Qualifications Such as Are Elected Bishops Must Especially Possess.

The Apostle St. Paul established the rule governing ordination, in which he stated what habits and qualifications a prelate of superior rank must possess in order to be eligible; for he held, that since he had been elected by the choice of God, it was necessary that he should surpass all other men in excellence. The rule which he established declares that such a one must be without mortal sin; have no impediment by reason of marriage; must be temperate in eating and drinking, wise, chaste, polite, hospitable, competent to explain the faith, not quarrelsome, violent, or avaricious, and know how to keep his house in order.

LAW XXXI.

How the Authorities of the Church Understand the Speech of St. Paul, That One Who Is Elected Bishop Should Be Without Mortal Sin.

Some authorities disagree concerning the meaning of the saying of St. Paul, that he whom they desire to ordain bishop should be without mortal sin. There are some who declare that a man who committed mortal sin after he received baptism should not be elected bishop, and that if he should be elected, he would commit a great sin and should be deposed; and that if after he had been ordained he should perform the service of the order which he had received under these circumstances, then he would commit sin, and also, although he might have performed penance for that sin, unless the Pope had given him his consent, it would be considered an impediment. Those who hold this attach no other meaning to the saying of the apostle but that of its very letter, and therefore this meaning is unreasonable, as according to it no one could be found eligible to be a bishop; for it would be very extraordinary, and decidedly

contrary to nature, to find a man who had never committed sin, and for this reason, that first saying of the apostle should not be interpreted in this way. There are other authorities who declare that by the saying of the apostle should be understood the greater sins which men commit, and not the lesser, since when they perform penance for these sins of inferior importance they should not be prevented from becoming bishops, nor should they be deposed for that reason: and those who give this opinion, do so that a distinction may not be made between sins of great magnitude, whether they were open or concealed, and for this reason the Holy Church did not deem it proper that their importance should be magnified. There are still others who maintain that the saying of St. Paul means sins which are publicly known; for, as for those which are concealed, no one should be condemned or deprived of orders on account of them, after he has performed penance for the same; and because they did not make any distinction between sins which are of great magnitude and heinous, and others, they so erred in their classification that they must be considered unworthy of belief.

LAW XXXII.

What, According to the Holy Church, Is the True Meaning of the Saying of St. Paul Relating to Mortal Sin.

Some understood the speech of St. Paul truly and reasonably, and for this reason made distinctions between very heinous sins, those which are moderate, and those which are of inferior importance by stating how many kinds there were, as will be explained hereafter. They declared that anyone who committed a heinous sin before he became a bishop, whether it was secret or open, even although he had confessed it, could not afterwards become a bishop, and they stated in addition to this that if the sin should be known, and the bishop be afterwards elected and ordained, he should be deposed. They came to this conclusion on account of the greater daring which attaches to a sin which is openly committed, through the example it has upon men. But if the sin was concealed, notwithstanding that his superior, after he became acquainted with the fact, could, as the representative of God, admonish him, and even punish him, declaring that he must not attempt to obtain the bishopric to which he had been elected; nevertheless he cannot, of himself, hinder or depose him, for the reason that only he knew that he committed the sin. And if he should commit only a moderate sin, which became publicly known through the judgment rendered against him, or by reason of the knowledge that the complaint had been made, or proof of it offered; or because the deed had been so notorious that in no way it could have been concealed, such a person should not be elected, and, if he had been elected, he should be deposed. Where, however, the sin became public through common rumor, and could not be proved, or if the party should be accused, and the accusation could not be established by evidence; still, if such indications should exist by means of which suspicions arise against him, then he must be ordered to prove his innocence, according to the will of his superior.

LAW XXXIII.

What Sins Are Great and Very Heinous In Their Nature, and What Are Moderate Sins.

Great sins, and such as are very heinous as the Holy Church defines them, are killing a man knowingly, willingly, and intentionally; committing simony while in orders; or being a heretic. Sins of moderate importance are such as the following namely: adultery, fornication, false testimony, robbery, theft,

pride, avarice, by which is understood niggardliness; rage of long duration; sacrilege, perjury; habitual drunkenness, and deceit in deed or word which results in wrong to another person. If, however, anyone commits sins of the description which we have mentioned in this law, and willingly makes it known in a proceeding to make atonement for the same, he should not be deposed, but his superior should prescribe Penance for him, according to what he thinks he deserves. Where the sins were concealed, this should not be an impediment to his election after he has performed Penance for them, nor can he, for that reason, be deprived of his position.

LAW XXXIV.

What Minor Sins Are.

Minor, or venial sins are, for instance, where anyone eats or drinks more than he should, or speaks, or is more silent than he ought to be; or where he rudely answers a beggar who asks for alms; also, when anyone is well, and is unwilling to fast during the time that others fast—if, however, he should do this in contempt of the Holy Church, it would be a mortal sin; where he is late at church on account of his love of sleep; or cohabits with his wife without the intention of having children but merely from a sense of conjugal duty; and where he does not visit those who are in prison, or sick, when he is able to do so. Moreover, where he knows that there are some persons who entertain hatred toward one another, or who disagree, and he does not attempt to establish peace or concord between them: or where he is more harsh toward his neighbor than is becoming to him; that is to say, where he is quarrelsome or overbearing in company, or of evil speech to his wife, or to his children, or to others who live with him; or where he becomes enraged with anyone more than he should be, or flatters him excessively—especially if the person is one in power—for the purpose of giving him pleasure, or attributing to him some virtue that he does not possess, or to exaggerate by words, to an extreme degree, any good quality he may have, for the act would be the same if it were done through fear, or for reward. It is also a venial sin to give to poor people food which is spoiled by too much cooking; or to utter words of contempt anywhere which do not do anybody any good, and especially is this the case where they are spoken in the church, which is built for the purpose of prayer to God: or where an oath is made by way of mockery, or amusement, and not on account of truth, and he who made it does not carry it out; or where anyone curses another with levity, and without caution; for, of all words of this kind and of others similar to them, man must give an account on the Day of Judgment; and, as the Scriptures say, those who swear shall not possess the kingdom of God, unless they are absolved as commanded by the Holy Church, that is, by pardon, or through the atonement which they make.

LAW XXXV.

Marriage Prevents a Priest from Becoming a Bishop or Prelate of Higher Rank.

Anyone who is prevented by marriage, or for any of the reasons stated in this law, cannot become a bishop. This would be the case where he had married two women who were virgins, or a widow, or any woman who was not a virgin when he married her, although she had never been married: or if he had previously possessed her as a virgin: or where he had married two wives who were persons he could not legally marry; or where he had married one whom he could legally marry, and, after she died, he had married another

whom he had no right to marry; or while the first was living he had married another; that is to say, showed a desire to marry, or consummated the marriage as far as he was able, and did not delay on that account. This would also occur if a priest should marry a woman whom he thought to be a virgin, and she was not so; and if, after having married her, she should commit adultery, and he, being aware of the fact, should afterwards have intercourse with her. The same rule will apply where a priest marries a virgin before he was ordained, and, after he was ordained, marries another woman whom he had no right to marry, for from that time forward, he cannot confer orders, or be a bishop: or where anyone takes orders, having made profession as his rule requires, and afterwards violates his engagements, and marries a virgin or some other woman; from that time forward he cannot become a prelate, or receive orders. Moreover, anyone who is married cannot be elected bishop, unless his wife should first enter some religious order, making profession and taking the veil.

LAW XXXVI.

Prelates Must Be Temperate in Eating and Drinking.

Those who are elected to offices of high ecclesiastical rank, should be temperate in eating and drinking, having a care not to eat immoderately, or drink so as to become intoxicated, because this is one of the greatest sins which they can be guilty of, for by means of it man shows ingratitude to God and to himself, and to all other things as well, more than by any other sin. As the ancient sages declared, wine is the way which leads to all sins, and, for this reason, the first thing that a prelate should be forbidden to do is this; for it is but right that he who has to give advice to many people should always have his brain clear; and therefore, if one of these, after he has been reprimanded for this error, should not be willing to reform, his superior must deprive him of his office and benefices. Moreover, eating too much is forbidden to every man, and especially to the prelate, because chastity cannot be easily preserved where there is inordinate indulgence in food, and great excesses prevail. For this reason the saints declared that it is not proper that those whose duty it is to preach poverty, and the hardships which our Lord Jesus Christ suffered for us in this world, should do so with faces that are red from eating and drinking to excess. And, leaving this out of consideration, serious illnesses naturally result from immoderate eating, in consequence of which men die before their time, or perish from the result of some injury.

LAW XXXVII.

Concerning Matters Which Prelates Should Understand.

A prelate should be well-informed and intelligent, and especially so in these three things; first in the Faith, that he may know how to instruct the souls which are given into his care how to be saved, and for this reason he must understand the science of Divinity; second, he must be acquainted with those branches of knowledge called arts, and with four of them especially, for instance grammar, which is the art of learning the Latin language; and logic, which explains how to distinguish truth from falsehood; and rhetoric, which is a science that explains how to arrange words elegantly and properly; and also music, which is the knowledge of rhythm, and is necessary for the chants of the Holy Church. For the above named reasons the Holy Fathers deemed it proper that prelates should be acquainted with these things, because they are very beneficial to those who know them, as they incite them to perform works

of piety, which they are bound to do. As to the other three¹ branches of knowledge, the Holy Fathers did not consider it advisable that prelates should endeavor to know much about them. For although these branches of knowledge are noble and very excellent, still, in themselves, they are not suitable for ecclesiastics; as they do not induce them to perform works of piety, as, for instance, to preach, and hear confessions, and other things of this kind which they are required to do by reason of their office. The third thing that prelates should be acquainted with relates to temporal matters, and is the knowledge of governing their bishoprics properly, and sustaining their people.

LAW XXXVIII.

Prelates Should Be Chaste and Modest.

Prelates should be chaste and modest in deed and in word. For it is eminently proper that those whose duty it is to consecrate the body of our Lord Jesus Christ and receive it themselves, and to administer the Sacraments of the Holy Church, should possess chastity and cleanliness. They should also have modesty, for, if they possess it, they will always avoid committing sin, and saying what ill becomes them. With regard to chastity, Solomon, who was both king and prophet, said these words, which refer to the Church: "Beautiful are thy cheeks, like the dove, because this bird preserves its chastity more than any other." Concerning modesty, our Lord God said to the Children of Israel in the ancient law, that they should teach their children to be modest, that they might be preserved from sin and from an evil life. St. Jerome, speaking of modesty, said, that it is a mark of nobility, and exalts him who has nobility of heart, since, by its means, he avoids doing and saying what may not be becoming to him; and, for this reason, he maintains that it is worse for prelates when they commit an error, than for other men.

LAW XXXIX.

Prelates Should Be Refined.

The Holy Church requires prelates to be refined, and this in two respects: first, with regard to themselves, second, in their relations with others. As to what concerns themselves, this is divided into two things, good thoughts and good habits; and that which concerns their relations with others is divided into four things, namely: eating and drinking, as has been above mentioned, and the matters of dress and self-restraint. By dress many things are understood, as, for instance, they must wear their garments fastened, and not short, with sleeves which are not sewed, and shoes without strings; and they must not use gilt bridles, saddles, or suspended breast-leathers, or gilded spurs, or other things indicative of pomp; or wear cloaks with sleeves, unless they change their dress through fear; nor should they wear jewels, or girdles with gilded leaves. The Holy Church also deemed it proper that they should not go without the Roman surplice over their other garments, unless they had formerly been Friars or Monks, for the latter cannot lay aside their habit. They should also wear their robes buttoned or fastened in front as a sign of modesty, but this they must do so as not to display hypocrisy. Moreover, they should have broad tonsures, and wear their hair so short that their ears can be seen; and this was established as a token of the kingdom of God, which they hope to attain to, and where they will be crowned, if they perform their duties as they should. For, as kings must govern men in temporal matters, so ecclesiastics must do so in spiritual matters, and, for this reason, the Church

¹ Geometry, arithmetic, and astronomy.—Ed.

styles them Rectors; and by their shaven crowns it is understood that they must remove from their minds the pleasures of this world, abandon temporal affairs and consider themselves sufficiently provided for if they have food to eat and clothes to wear, which are suitable for them. They should also be refined in their behavior, conducting themselves properly and modestly, as befits them; for naturally the appearance and mien which men exhibit, in addition to their deeds, disclose what their desires are, as well as all their acts.

LAW XL.

Prelates Should Be Hospitable.

Prelates should be hospitable towards the poor, for the Holy Church ordained that their houses should be like hospitals, to receive them and give them food; and the Apostles themselves did this in the beginning, for the things which were given to them all in common, or to each one for himself, they joined together, and took from the common fund whatever was necessary to clothe them, and for their support, and all that was over and above this they bestowed upon the poor. And, for this reason, the Holy Fathers deemed it proper that whatever superfluity remained to the prelates from the revenues of the Church, over and above what they and their associates required for their needs, should be given to the poor; for they could not well admonish others to bestow alms, if, when those who were in want came to their houses, they would shut their doors and refuse to receive them, but it is their duty to welcome them, and to do all the good they can. For, if they should receive some, and drive away others, it would sometimes happen that they would repulse the good, and receive the wicked. And because Abraham and Lot usually entertained all who came to lodge with them, God willed that they should have angels for guests; and if they should repulse any of these, it might happen that angels, who are celestial guests, might be driven away with them. Wherefore, those who have this duty to perform must make no distinction among the poor, by giving to some and not to others, but there are those who, on account of some trade they have, and by means of their labor are able to earn what they and others can live upon, and do not do so but rather prefer to resort to the houses of others, and support themselves in this way. With regard to such as these, the Holy Church deems it more proper to deprive them of food than to give it to them, since they avoid earning it, though able to do so, but, not being willing, choose to obtain it by knavery. If it should happen, however, that persons of this kind were in such distress that they were about to die of hunger, not having anyone to assist them; one should not avoid doing something for them lest they perish, even if they are wicked. For, as it is a fitting reward to deprive them of food, on account of the deceit of which they are guilty; still, it would be an act of great cruelty to let them die of hunger. And prelates not only should be charitable, but they should also give alms to such as are in need, and especially to such as are modest beggars.

LAW XLI.

How Prelates Should Preach and Explain the Faith.

Ecclesiastics of superior rank should be expounders and preachers of the religion of Our Lord Jesus Christ, as they occupy the place of the Apostles. Their instruction and preaching should be of two kinds; one of words, the other of deeds, because the Scriptures made by Our Lord Jesus Christ declare that he first began to act, and afterwards to teach. This agrees also with what St. Jerome said, namely: that the wolves should be frightened away by the

barking of the dogs and the staff of the shepherd. By barking is understood preaching, which arouses fear through speech; and by the staff the punishment which is given by the good works which they themselves do and exhort others to perform. However, the punishment by deed, should be imposed with moderation and with great prudence, and with love and not with ill will; in order that men may understand that it is done more through the love of God, and to chastise them that they may obtain good, than to do them harm: and that they should not despise men on account of the sins they commit in order to do them injury on that account, but to rescue them from their sins as far as they can; for true justice should be administered with sorrow, and for lawful reasons, as injustice is inflicted rudely, and without right.

LAW XLII.

What Qualifications a Prelate Should Possess in Order to Preach and Expound the Faith Properly.

A prelate should preach to the people of his bishopric, priests as well as laymen. This is the second method of instruction mentioned in the preceding law, which is imparted by means of speech. And preaching must be in one of the following ways, namely: either to explain to them how they may know and understand the belief in the Faith and how to avoid committing sin after they have understood it: or how they can perform Penance for their sins after they have committed them. In order to do this properly, he who preaches must possess three qualifications; first, charity, which means the love of God, more than anything else, as well as love of himself and of his neighbor; second, he must lead a good life; third, he must preach well. The saints mentioned these three qualifications, and explained why they should exist: for, of the first, St. Paul said: "Though a preacher should state his argument so that he seemed to those who hear it, to speak by the mouth of an angel, and have not charity, it will not profit him." Of the second, St. Gregory said: that if a preacher lived a bad life, for the reason that he is despised, his preaching will necessarily be despised on his account; because he who preaches well, and lives an evil life, shows the way to God in a manner to cause injury, and offers an example of sin to those who hear him. A preacher of this kind may be compared to ashes from which lye is extracted, which washes other things while the ashes remain unclean. He may also be compared to a stone aqueduct through which clear and clean waters flow, by means of which the land is irrigated, and which at times are productive of much benefit; but which do no good to the stone, nor soften it, but it remains rough and hard as it was before. And he may also be compared to a lighted taper, which burns of itself and lights others, but receives no benefit from its own brightness. Of such men the Apostle St. Peter said that they were like springs without water, and like clouds driven by the wind, and that they were preserved for the darkness of hell. St. Gregory also said, that those prelates who live a bad life deserve the same number of punishments as that of the bad examples which they offer to their inferiors.

LAW XLIII.

What Things a Prelate Must Observe in Order to Preach As He Should.

In order for preaching to be well done, it is necessary that he who preaches should bear in mind the four following things, namely: time, place, whom he is addressing, and how he does this. As for the time he must observe, he should not preach every day, but at appointed and proper seasons. For if it should rain continually, the earth would not bear fruit, and the case is the same with

preaching; for if preaching were done continually, men would experience annoyance from it, and it would not enter into their minds sufficiently to do them good. They should also pay attention to the place where they have to preach, for preaching should be done in the church, or in some other respectable place, and in the presence of all and not privately in houses, lest suspicion of heresy arise against those who listen and those who preach. For this reason Moses commanded in the ancient law that when the high priest entered the temple he should have many small bells about his dress which would ring so that the people would hear them, for this meant to show that he should preach his sermon publicly. For this reason King Solomon said; "Scatter your waters in public places"; and with this agrees what our Lord Jesus Christ said to the Jews, when they asked him if he was the Christ, and he answered: "I speak publicly to all the world, and say nothing in secrecy"; and he also said in another place to the Apostles; "What you hear in secrecy, preach upon the house tops." The church does not forbid, however, that good words and good reproofs be given in secrecy, and elsewhere, but this should not be done in the style of preaching.

LAW XLIV.

Prelates Should Carefully Consider what Manner of Men Those Are to Whom They Preach, and the Kind of Words They Use in Addressing Them.

Prelates should take into consideration when they preach, what kind of men those are whom they are to address, whether they are learned or destitute of knowledge: for if they are educated and intelligent, they can preach to them concerning the greater and more important matters of the Faith and of the Scriptures; but if they are such as do not possess this intelligence, they must speak words which are few and plain, and which can be easily understood, and by which they may profit. This Our Lord Jesus Christ stated when he preached to the people in public places, and to the Apostles on hills and lofty mountains. For this reason St. Paul said: "To wise men we should speak words of wisdom, and to others we must give milk, and not strong food." The preacher should also pay attention to the words he makes use of in his sermon. And in this point St. Gregory spoke to the prelates, and told them that they should take great pains not to use improper words in their sermons; that they should also be careful that those which they did use were appropriate and good; and that they should not repeat them many times or in a disorderly way, beginning one argument, and taking up another before the first is finished; for words sometimes lose their power when those who hear them perceive that they are not spoken with due caution. Moreover, he who preaches should not explain the Latin language to the people as if he was teaching them. Nor should he, while he is preaching, relate any of the silly tales contained in Latin books written by the pagans, or anything similar to these in which they praise their religion; for it is not right that, in the sermons they preach, their belief or that of any other people should be praised along with that of Our Lord Jesus Christ. These things the Holy Church forbade, because, at times, there were some who did them and injury resulted therefrom.

LAW XLV.

A Prelate Must Not Stop Preaching on Account of Grief, Nor Because of Any Wrong Done to Him.

Neither grief, nor insults which prelates and others whose office it is to preach may receive from men, should be permitted to interfere with the discharge of their duties. For it is said in the Gospel; "Blessed are those who are

persecuted for the sake of justice, for theirs is the kingdom of heaven." And when it is said that they should not stop preaching, it is understood that it is impossible but that those to whom they preach should be either all good, or good and bad together, or all bad; for where all are good, the sermon will produce greater benefit, because it will act more speedily upon them and confirm them in their goodness; where they are both commingled, the sermon will act upon the good, as we have stated, and will open the way to self-knowledge for those who are not so; and where they are bad, and the preacher is confident that they will mend their ways, he should not desist from preaching to them on account of their wickedness. And, for a similar reason, St. Paul said, while advising and exhorting those who were to preach: "Entreat, reprove, upbraid, and be zealous always." For he should entreat them to act properly, reprove them for the evil they do, and reprimand them severely for their injurious acts; and he should be zealous in all these things, without regard to either time or opportunity. But if they are all so wedded to their evil ways that no hope exists of their reform, he should not waste the word of God upon them: first, because they do not desire to understand it so that it may benefit them; and second, because they might treat it with contempt. Wherefore, he who is preaching should then stop and be silent, having great sorrow in his heart, and saying as Jeremiah the prophet did: "I am alone, and full of grief." The preacher should even do more, he should leave that place and go to another where he can do some good until those people are willing to repent. For this reason King David said in the Psaltery: "I separated myself from the wicked, and went to dwell alone in the desert." Moreover, our Lord Jesus Christ said; "If they persecute you in one city, flee to another." He did this when the Jews desired to stone him, when he left the Temple and concealed himself.

LAW XLVI.

Which Says That Prelates Should Not Preach the Excellence of the Faith to Heretics, or to Those Destitute of Understanding.

There are secret matters relating to the Christian religion which prelates should not explain to heretics, although they ought to preach to them; that is, unless they perceive certain signs in them that by this means they are desirous of being converted from their errors, and, even then, they should not teach those things to them except with great caution. For as the Gospel says: "Precious stones should not be cast before swine"; which means that the secrets of our religion should not be taught to heretics, or to men without intelligence, because they are more ready to condemn, than to believe them. But if they should act in such a way that they are compelled to enter into discussion with them, they must show them their errors, reproving them with moderation, exchanging statements with them, and speaking such words to them that they may draw them from their belief in these matters, in such a way as not to dispute with them concerning the secrets of our Holy Catholic Faith. For to make no answer to what heretics say would cause it to appear that they have no arguments with which to defend themselves, and that they do so for this reason, and other Christians might happen to be there, who would fall in doubt because of this, not understanding why they kept silence. They should not argue with them publicly before the people, for men without intelligence might fall into great errors by hearing such debates: because heretics pay no attention to anything else but the denunciation of our Creed and our Holy Catholic Faith, and the injury of it as much as they can do deceitfully, by uttering many artful and witty speeches to deceive ignorant men.

LAW XLVII.**Nothing Should be Preached Which is Contrary to the Law.**

No prelate should preach anything contrary to the methods stated in the preceding law. For he who attempts to do so acts contrary to what is right, and it is something that very ill becomes him. This will not occur unless he is too great a talker, or a flatterer, or one who, on account of his vainglory, desires to make men believe that he is very learned. But where prelates preach as above stated, and those whom they address are unwilling to hear and believe them, to the end that they may be freed from the sins which they commit, those who preach are not to blame in the sight of God. For they can say as St. Paul did; "My hands are clean of your sins, for I did not decline to teach you the word of God or to give you advice." And, in a similar manner, St. Augustine spoke and said, that although he took great pains to correct those under his control in order that they might be good; nevertheless, if there were certain among them who turned to wickedness, it was not his fault, for although he did not accomplish what he desired, still he did what he could, and what was his duty. And saying this, he proved that he was a man, and that he had lived among men, and that he did not venture to praise himself, nor could he say that his house was better than Noah's ark which was made by the command of God, in which there were eight men and women, and one of them called Ham who was wicked. Nor, moreover, was his better than the house of Abraham, who was a patriarch and a great friend of God, from which Hagar his servant and her son Ishmael were driven out. Nor was it better than that of Isaac, who was also a patriarch, for whom God did much, and to whom were born two sons at once, named Jacob and Esau; one of them was good, and the other wicked. Moreover, it is well known that no society was better than that of our Lord Jesus Christ in which were the twelve Apostles, yet one of them committed the sin of treason. Wherefore, when under such circumstances there should have been such good men and such friends of God, there were both good and bad; it is no wonder that such should be found among other people whose characters greatly differ, and who have a stronger desire to do evil than good. Thus, as our Lord God said to Noah, when he destroyed the world by means of the Flood, that he should repent because that he had made him a man, although his instincts were rather inclined to evil than to good: for all that, he did not hesitate to confer benefits on those who were good, for he saved Noah and his family in the Ark. And, with regard to this, St. John, the evangelist Apostle, said in the Apocalypse; "Let the good increase in his goodness, and the wicked, if he does not desire to reform, remain in his wickedness." Nevertheless, prelates should not cease to preach or explain what is good to the people the best they can; they should rather act as faithful physicians who do not desert the sick until death, constantly trying upon them the remedies by means of which they think they can be cured, for it sometimes happens, that results are effected in an hour which cannot be accomplished in a great space of time.

LAW XLVIII.**A Prelate May Sometimes Correct Harshly, But With Moderation.**

A prelate, while preaching, may sometimes reprove harshly, but he must do so with moderation; for the lives of men are not corrected by unrestrained rebuke as they are by temperate admonition, nor do they show their superiors the honor to which they are entitled, but they remain angry with them, believing that they give them greater castigation than they deserve. But the prelate who does not desire to reprove his priests, as well as others

belonging to his bishopric, when he knows that they have committed sin, is guilty of a great fault, and should be punished for it by his superior. For, as St. Augustine said: "A bishop who does not inflict punishment should be called an ignorant dog, (for he does not bite when he should) rather than a bishop;" for there is not in the world so bad a prelate as he who, in order to be flattered by men, avoids punishing them as he whose duty it is to do this, (if he is aware of it and does not do it) cannot be without sin, for it seems as though he consented to it, and approved of it. Wherefore the ancient law declared that those who actually committed crime, and such as consented to its being done, should be punished in the same way. We have a striking example of this in the ancient law, where the priest Elias, because he was unwilling to punish his sons for the wickedness they committed, died an evil death in consequence. For which reason, prelates who act in this manner, and are unwilling to correct their faults after they have been admonished, should be deprived of the offices they hold by their superiors who have power over them.

LAW XLIX.

For What Faults a Prelate Should Ask Pardon of Those Over Whom He Has Power.

Any prelate, whether a bishop, or one of those above named of higher rank, should be reminded and notified—if in his discourses he should be abusive to anyone, by reason of dislike, as, for instance, ill-treat him in any way or insult him—to beg his pardon; and that he should do this, is shown by what is said in the Gospel: "If thou shouldst desire to offer anything before the altar, and shouldst remember that thy neighbor hath any complaint against thee, on account of some wrong which thou hast done him, leave there the offering that thou didst desire to make, and beg him to forgive thee, and then come and make thy offering." This fault, however, should be more readily overlooked in a prelate than in another ecclesiastic of inferior rank; for he who has to govern a society and correct it, can hardly avoid committing such an error, by, at times, doing or saying too much. But if what has been mentioned above should be done by way of reproof, he should not ask pardon for it, although he may have erred; for the reason that he should not debase his honor and his power by humbling himself to too great an extent; as when prelates desire to humble themselves and descend to the level of their inferiors, they degrade themselves by so doing; for it is shown by the sayings of wise men that contempt of government arises from great familiarity between lords and their vassals. Moreover, a prelate ought to exalt the honor of his office by means of his learning, in order that he may not be despised.

LAW L.

A Prelate Should Not Punish in Such a Way That Scandal May Arise Therefrom.

A prelate can punish those over whom he has power with severity, when they commit any act which is very heinous, as is stated in the second law preceding this; but he should do so in such a way that great scandal may not arise therefrom. And, for the reason that prelates may be sure what scandal they should guard against, and what not, the Holy Fathers made a distinction in this respect; for they said, that where a prelate omitted to do or say something through fear of scandal, which was of such a nature that by neglecting it he might fall into sin, it was better that people should be scandalized than that he should sin mortally. This would be the case where a prelate did not

lead a good life, or failed to ask others to do so: or neglected to say or to do what is true, which is justice; or neglected to teach the Faith through fear of scandal. If, however, what the prelate ought to say or do by which the people might be scandalized, should be of such a nature that, failing to do or to say it, he would not fall into mortal sin, the Holy Fathers declared that in an instance of this kind he had better omit doing it, through fear that men might be scandalized. This would happen where the prelate thinks he ought to mitigate the effect of justice, in order to avoid scandal which might arise concerning some case in which he could show mercy. But this should not be lightly done, unless he knows that those who committed the act with regard to which he wishes to do justice are very powerful or numerous, as, for instance, more than forty in number; for under such circumstances, he can very well neglect the matter through fear of causing scandal, but he should not do so with regard to all persons implicated as in any instance, for punishment should be inflicted upon those who were instigators or principal parties in the commission of the act. Where, however, the persons whom the prelate desired to favor in this way attempt to defend themselves by a show of audacity: declaring that others before have committed such faults, or that it was not customary to punish offences of this description by the ancient laws and charters, and for that reason they did not deserve chastisement; the Holy Church does not permit persons of this kind to take advantage of her clemency, but commands rather that they be proceeded against with severity, because they desired to obtain, as a privilege and through custom, immunity for things which are evil and outrageous, they being ungrateful for the favor shown them, and desiring to profit by their ingratitude. And the same measures should be taken against such as commit a sin and desire to practice it habitually, for such offences should be strictly prohibited, that others may not follow their example in order to commit them.

LAW LI.

A Prelate Ought Not to Explain to the People What Is Not Proper, For Fear of Scandal.

Fear causes men to do and say things which are not proper, and this is not becoming to a prelate whose duty it is to preach and teach the word of God, and who, through fear of scandal, changes his mode of instruction, and makes false statements when he preaches. However, where those to whom he preaches, or imparts instruction, are bad, or hardened in their wickedness so that they have no desire for reformation through his instruction and preaching; then it will be well for him to be silent, as we have already stated above in the law treating of such matters. This however should be understood solely to refer to such as do not desire to be assisted by any of the methods mentioned in the preceding law. For where they attempt to excuse and defend themselves, by declaring that they do not desire to receive this instruction because they have a right to do what protects them, as it is not a sin; he should then proceed against them as heretics, as far as he is able, and, even though they may be many in number, he should not fail to do this, neither should he hesitate by reason of scandal. If, however, those whom the prelate punishes should be few in number and powerful, and should acknowledge the fault for which he reproves them, but should not desire to correct it, relying upon themselves and upon those they have with them; when a case of this kind arises, the Holy Church commands that it be ignored, in order that scandal may not be caused by means of which a contention may spring up between such persons and the Holy Church. They should, however, be reproved privately, and shown that they are in danger of the perdition

of their souls, explaining to them, by means of the Holy Scriptures, why they should fear God and renounce their errors: and these admonitions should be given particularly to those of higher rank and greater intelligence, for, after they have been corrected, the others can more easily be reformed and caused to abandon the wickedness which they commit.

LAW LII.

For What Reason He Who Causes Scandal Commits Mortal Sin.

Those whose acts produce scandal sometimes commit mortal sin, (as is explained in this law) for the reason that they cause other men to sin through their example. This is proved by the following saying which our Lord stated in the Gospel: "Evil to him through whom scandal arises, for it will be better for him that they place a millstone about his neck and throw him into the depths of the sea;" and since he imposed the penalty of death for scandal, it should be well understood that it is a mortal sin; and on this subject St. Augustine said, that one had better die of hunger, than to eat with scandal the things which are sacrificed to idols. He said this because at that time there were pagans who worshipped idols, and offered them sacrifices of food which they placed before them; for which reason those who ate of it would sin mortally, by inducing others to do the same thing. The Holy Church also deemed it proper that scandal should not only be avoided by those of high rank, but also by their inferiors, for the following words taken from the Gospel of our Lord Jesus Christ declared: "That he who scandalized one of the least of those who believed in him, should have a millstone tied about his neck and be thrown into the depths of the sea." By all these sayings it is established that he commits a mortal sin who does or says anything from which scandal may arise, and cause persons of high rank, as well as their inferiors, to commit mortal sin.

LAW LIII.

In What Respects He by Whose Acts Scandal Arises Does Not Commit Mortal Sin.

Some prelates live a good and honorable life, however, for the reason that men sometimes entertain suspicions against them which are without foundation, and not knowing the truth, sin in a scandalous manner; in cases of this kind the Holy Fathers declared that a prelate does not sin mortally, although others may be scandalized on his account, since he is not guilty, for his fidelity frees him from sin, and especially is this true of one who lives a good life. This is proved by St. Paul, who said: "The testimony of our minds is our glory." Moreover, Job said: "My testimony is in heaven, and God knows what I do." St. Augustine said the same thing: "Suspect as much as you like, provided my conscience does not accuse me before God": for which reason, when suspicion arises, a prelate should strive to live a good life, showing his sincere intention in order that it may acquit him of what he is suspected. Wherefore, those who do not know this should be made acquainted with the fact, for to be a man of good life not only benefits himself, but to be of good report is of advantage to others as well. Of this Our Lord Jesus Christ gave us an example when he said to St. Peter: "Go and fish for thyself and for me, in order that no scandal may arise concerning us." But after a prelate through suspicion of whom a scandal arose, evinces a desire to remove persons from the error into which they have fallen, and they should not be willing to believe him or cease to sin, notwithstanding he is guiltless; he must grieve in his heart

and show that it afflicts him, since on his account they are induced to act in this manner. This is manifested by the example given us by Our Lord Jesus Christ, when he said to the Pharisees that what entered into the mouth did not defile a man, but what issued from the heart. The Pharisees were scandalized by this speech, and his disciples told him so, and he answered them: "Let them go, for they are blind and the leaders of the blind, for it necessarily results that when one blind man leads another both fall into the ditch"; and after this he said to his disciples, by way of reproof, that they were void of understanding, and did not know that what enters into the mouth, and nourishes the body, and is distributed by it wherever it is suitable, does not defile a man, but what issues from the heart, as thefts, murders, adulteries, evil thoughts, and other similar things; these are what defile a man because they deprive him of his good reputation. This he explained to his disciples to show them that he had not spoken in such a way as to scandalize the Pharisees. For this reason every man can understand that those who are scandalized without reason or justice commit sin, and that the other party from whom they derived the scandal is not guilty.

LAW LIV.

A Prelate Should Not Be Quarrelsome.

No prelate should be quarrelsome (as the rule of St. Paul declares), and this is so for three reasons: first because a quarrelsome person is proud and disdainful, and on account of his pride and disdain, although he may know good and just things, he cannot teach them with humility, or in a proper manner, as it is suitable for a prelate to do. For which reason St. Jerome said that there is nothing so shameless as pride and disdain, for these things appear worse in a prelate than in another man. The second reason why a prelate is forbidden to be quarrelsome is, because when such men, through their arrogance, cannot accomplish what they wish, they try to attach themselves to princes, and to become flatterers and detractors, speaking evil of those they dislike, attempting to nullify the good which the latter do, and to give them a bad reputation and an evil notoriety. And, even without this, they are accustomed to be envious of the good fortune of others, lying in speech, betrayers of secrets told them, and quick to avenge themselves for annoyances which they suffer. The third reason is, that a quarrelsome person endeavors to produce discord among men, and this is not becoming to a prelate, for it is rather his duty to establish peace and concord between those who hate each other and who do not agree.

LAW LV.

A Prelate Should Not Inflict Wounds.

No prelate should be violent, because it is something which does not become him. This violence is of two kinds; the first is that of speech, which is called spiritual, and the other that of deeds which is called corporal, and a priest wounds by means of his speech when he is of wicked mind and evil disposed, and says something bad and without benefit, through which the hearts of men are induced to say or do something wicked; and if they fail to do it because they do not dare to, they nevertheless remain wounded or injured in their minds: and the Holy Church absolutely forbids this kind of injury, because evil always results from it. Prelates sometimes inflict wounds by words, or in some other way, mentioning in their sermons in an ambiguous manner, what they know about certain persons, in order to put them to shame in the presence of those who hear them; imputing to them wickedness which

they did not commit, or disclosing something they had done in secret, which is not yet generally known. There are also some who, desiring to throw the blame upon others, do this in order to conceal the unlawful acts which they commit. A wound of this kind is dangerous, for it never can be cured, and a prelate should never inflict it in any way. Such are referred to by Isaiah the prophet when he said that some spoke good of what was evil, and evil of what was good, and took light for darkness, and darkness for light. Persons who in this manner speak evil of their superiors or of other men, the Holy Church considers worse than those who steal the property of others; for the latter appropriate riches which are outside of the body of man, and slanderers destroy, as far as they can, the honor and good reputation of men, which is the most precious thing which they can possess.

LAW LVI.

Prelates of the Holy Church Should Not Commit Acts of Violence.

Prelates should not inflict bodily wounds, which is the second kind of injury mentioned in the preceding law; as, for instance, with the hand, the foot, or with anything else, with evil design or through malice, or for the reason that they may be more feared; for if they should do this for any of these reasons, they will commit a great sin, and should be punished for it in such a way as their superiors decide, according to the nature of the act by which the wound was inflicted, so that they may be chastised and have no desire to do so again. However, by way of punishment, and through affection, in order that their errors may be corrected, they having done what they should not, prelates may strike those over whom they have authority, but not with their own hands, for they must command others to do this. Where any priest who has not received holy orders does something he was not authorized to do, the bishop can command another priest to whip him, giving him this discipline with a strap, or with rods, or with his hands, in a moderate manner, even though the fault which he committed may not have been a serious one. Those of the clergy, however, who have taken holy orders, as, for instance, priests, deacons, or subdeacons, should not be scourged or suffer other punishments, unless they have committed such serious offenses as to deserve it, and such things must not be committed to laymen to be done; for a prelate who would command this, and a layman who would carry it out, ought both be excommunicated; unless the priest is so obstinate that he will not allow himself to be punished or seized by the other ecclesiastics, and then laymen can do this by order of those prelates under whose authority they are, in order that malefactors may not go unpunished; and where it is done in this way it is understood that the laymen do not perform the act of themselves, but through those by whom they were commanded to do it. The layman must be careful not to do more harm by his blows than he was directed to do, for, if he does, he should be excommunicated; except when the priest defends himself or desires to inflict injury, for which reason the layman is necessarily compelled to use more force than he had been ordered.

LAW LVII.

Prelates Should Not Witness Exhibitions, or Play Draughts, or Throw Dice, or Play Any Other Games Which May Interfere with Their Composure.

Prelates should pay careful attention to their conduct as men whose example others follow, as above stated: and, for that reason, they should not witness exhibitions, as, for instance, lance throwing, tilting, or fights with

bulls or other wild beasts, or visit those who take part in them. Moreover, they should not throw dice, or play draughts, or ball, or quoits, or any games like these which tend to interfere with their composure, nor should they remain to witness them, or be familiar with those who play them; and if they should do so after having been warned by those who have the authority over them, they must, on this account, be suspended from office for three years: nor should they hunt either beast or bird with their own hands, and he who persists in doing so after his superiors have forbidden him, must be suspended from office for three months.

LAW LVIII.

A Prelate Should Not Be Covetous.

A prelate should not be covetous for two reasons; first, because covetousness is the root of all evil, for the mind of a covetous person cannot refrain from things which are prohibited, nor is it satisfied with what it can rightfully possess. The second reason is, that the mind of the covetous person is blind, and does not perceive the things which are for its benefit, but always longs for temporal riches, with a view to the revenues and profits which it covets. And, as Solomon said, persons of this kind more willingly revere gold than the sun; which means that they pay more attention to temporal riches, which are deceiving because they are transitory, than they do to those which are celestial, which are true, and endure forever. And for the reason that these evils and many others result from avarice, the Holy Church forbade prelates to be covetous, because it is their duty to punish, to reprove, and to prohibit others, in order that they may not be so. And, as wise men said, it does not become a master to reprove his disciples for a fault which he himself commits.

LAW LIX.

A Prelate Should Keep His House in Proper Order.

A prelate should be the governor of his house, and take proper care of his family. This is done in two ways; first, by providing for them abundantly and well what they have need of, in order that they may not, through want, be guilty of wrong; second, by punishing them, that they may learn good habits, and avoid committing faults; for it is very evident that he who does not know how to punish in his own house, or keep it in order, (which is a matter of trifling importance) will not know how to govern his bishopric, where there are many men of different kinds; wherefore, he who does not know how to do this, ought not to be a bishop for two reasons. First, because he cannot be one without shame, punishing others when they commit faults while he does not chastise the members of his own household; second, because it may well be suspected that the faults which they commit do not trouble him, since he has the power of punishing them, and does not wish to do so. This the Holy Church regarded as such an offence, that where he who committed it was a bishop, and it was proved upon him, she ordered that he should lose his bishopric. Where, however, his family is so wicked that though he does what he can to restrain them, as stated above, they are unwilling to mend their ways, he should not be blamed on that account: nor should he be deprived of his bishopric, or his other benefices for this reason; but it may naturally be presumed that his family is bad through his neglect to punish them, until he shows that the fault is theirs, and drives them away. Moreover, a prelate should have priests and other men in religious orders, who are honorable, to serve him, and who know what life he leads in secret, and may be witnesses of it, as well as of the excellence which they see in him, that they may follow his good

example and profit by it: and this they should do, because it is more proper for priests to know what life their prelate leads, than it is for laymen.

LAW LX.

A Prelate Should Govern His Church Properly.

A prelate should govern his church well, so that all things necessary for its service should be performed in an orderly manner, and, for this reason, he should strive to have the canons and the other ecclesiastics of his church live honorably, according to the ordinances of the Holy Fathers that those things which they have to do should be done in a becoming manner; and that such men should be selected for this service, whom he is certain are accustomed to, and skilled in attending to it, indicating to each one what he should do, and he should not assign two functions to one person, for when a man has many things to do he cannot do them so thoroughly.

LAW LXI.

The Stewards of the Bishop Should Be Priests, and Not Laymen.

His house and his church having been put in order, a prelate should arrange the affairs of his bishopric; and, in the first place, he should appoint over it good and intelligent priests to collect the revenues, and take good care of them, and laymen should not be appointed to such places, for two reasons: First, because priests will give better testimony concerning the discharge of the duties which they perform there, if they should be inquired of in court concerning them, and will evince more willingness to see that his dues are not curtailed, which a layman would not do so well. The other reason is that if priests should commit any breach of trust in office they can be controlled by the law of the Holy Church, and caused to make amends for it much more easily; which cannot be done in the case of laymen, as they would have to be brought before secular judges. Moreover, a prelate should not appoint any of his relatives stewards of the bishopric, or place them in charge of business belonging to the church, or other men to do what he wishes; for the reason that from this source great injury may arise if the bishop should be a person who may desire to collect more than his just dues from his bishopric: for if those whom he appointed were his relatives, in order to give him greater pleasure by sparing no efforts for that purpose, they would be more oppressive to the vassals of the church and even to the priests, by collecting taxes more zealously than others would do; and though they might not cause any diminution of revenue (or if they did, it might not openly appear) still men would suspect that they were exerting themselves more for their own benefit than for that of the church. Therefore, a prelate who acts contrary to this will commit a grievous sin, and his superiors should excommunicate him for the space of a year, and those who, contrary to law, appropriated anything belonging to the church or its vassals, should return double the amount.

LAW LXII.

How Prelates Should Keep Churches in Order, and Govern Them and the Priests of Their Bishoprics.

Prelates should preserve proper order, not only with regard to the matters mentioned in the preceding laws, but they also should order other ecclesiastics of inferior rank who are subject to them, as, for instance, the archdeacons and archpriests of their bishopric, to strive, along with the priests whose duty it

is to obey them, to live honorably and avoid doing the things forbidden by the Holy Church; and also to keep good order in their houses, and take care of their churches and all the property belonging to them, in a suitable manner; warning them that they will commit a great fault if they should do otherwise, and be liable to severe punishment from which they could not escape without great injury to themselves; unless the prelate should desire to show them some favor, by excusing them from the performance of these duties, which they have power to do according to law.

LAW LXIII.

In What Way Prelates Can Grant Dispensations to the Priests of Their Bishopric.

A dispensation is a license, which a governing prelate grants to those over whom he has authority, to do, or to use, things forbidden to them by law. However, since it has been stated in the laws preceding this that prelates can punish and prohibit those subject to them, to prevent them from committing faults; it is proper to speak here concerning the things for which they can issue dispensations to them, and they are as follows, to-wit: where they commit the sin of simony; and where others commit sins of less importance which the laws above mentioned treat of; also where the priests of a bishopric take orders at times when the Holy Church forbids them to do so, and where such have received them from a bishop who has renounced his bishopric and his office, but not knowing he has renounced it, as will hereafter be shown; and where they have received them from a bishop who has been excommunicated. A prelate can also issue a dispensation to a boy who is fourteen¹ years old, to have a church and the care of souls. Moreover, with regard to those who have taken inferior orders, he can grant dispensations for them to be prelates of certain churches, only they must be such as, within the space of a year, may be eligible to receive orders of higher rank. He can also grant dispensations for priests who commit adultery, or other inferior or greater sins, to retain their orders, after they have performed Penance. He can grant dispensations to those who are opposing one another in a law-suit according to the custom of the country; provided they do not kill, or injure anyone so that he may lose a limb, or they themselves be maimed. He can also grant a dispensation to baptize, or assist to baptize one who has been already baptized, after he who has done this has taken orders. He has power to grant a dispensation to a priest who has received the higher orders, to retain his office if he should marry a virgin; and this after he has performed Penance. And he can also grant a dispensation to any member of the regular clergy to be a priest and have a parish church, with the permission of his superior. He can also grant dispensations to priests who are suspended, to say mass, and to retain their benefices, and to those who have taken the higher orders to omit the intermediate ones, or to make use of orders which they have not received: and this also applies to those who have received them clandestinely, unless the bishop should have excommunicated all who have received them in this way. He can also grant a dispensation to his canon, or his priest, to change his canonicate, or his church for another, if a reasonable cause should exist for him to do so.

LAW LXIV.

In What Matters Bishops Cannot Grant Dispensations to Priests.

Bishops are forbidden to grant dispensations to priests to receive several orders in one day, except those called the four degrees, but they can do so

¹ See *post* 199 n. 1.

after they have received them. They cannot grant dispensation to boys under fourteen years old to hold prebends, or livings, or benefices with the care of souls, or to such as are not sound in limb, or, if they are, who are in such a condition that they cannot use their limbs. Nor can they grant dispensations to such as have any impediment by reason of marriage among those mentioned in the Title concerning priests. Moreover, they cannot grant dispensations to those who engage in battle in accordance with the law of the land, if death or loss of limb to either of the parties should result while contending by ordeal, or in any other way, for either themselves, or on behalf of others. Moreover, they are forbidden to grant dispensations to those who have been ordained while they were excommunicated, whether they know the law of the Holy Church or not, although they may not be aware why they were excommunicated. Dispensations cannot be granted to those who have committed simony in order to receive orders. By this it is understood that the bishop accepts something from them to ordain them; but if he does not accept it, and those who are ordained are not cognizant of the simony, he is still authorized to grant the dispensation, provided the priest who received the order in this way gives an unconditional promise never to make use of it. Dispensations cannot be granted to those who have obtained bad reputation on account of some atrocious act mentioned in the laws which treat of this subject. Nor can they be granted to anyone who might be the abbot of a monastery who has previously made profession in another order; nor to a priest to hold two prebends in one church; nor to such who do not know anything concerning the duties of the clergy; nor to those who are performing solemn Penance; nor to slaves to be freeman; nor to such as are required to render an account to the king, or to some other secular authority, before they have rendered it; nor to anyone who has received one of the higher orders at some previous time, excepting in such cases as are especially indicated where this can be done—although a dispensation may be granted to one or two to be ordained with one of the four orders, or with all—and this can be done on Sundays and on other principal holidays.

LAW LXV.

What Superiority in Dignity Prelates Have Over Other Priests.

Prelates, through the dignity of the Holy Church, have superiority over other priests in seven respects. First, upon the day that they are made bishops the power of their confessors, or of any other superior which exists if they belonged to any religious order, is lost. Second, they cannot be appointed the guardians of minors. Third, if the prelate is a slave, or the vassal of some noble family, or is descended from any of these, he will for the future be free, and no one can again reduce him to servitude, or cause him to render to his lord the service which he formerly was bound to perform. If, however, he was an official of the court of the king, and among those required to render accounts, he is not free for that reason, unless he surrenders three-fourths of his possessions at the time he was elected. Fourth, he cannot be compelled to testify before any judge, or anywhere else if he does not wish to do so, but he must inform him that he will tell the truth, as far as he knows, in the way stated in the Title on witnesses.¹ Fifth, he is not required to come, nor can he be compelled to appear in his own proper person, in a lawsuit before any secular judge, unless the King commands him to appear before him. Sixth, he cannot be compelled to give security in any lawsuit. Seventh, he must not give anything to the judges out of the property concerning which the lawsuit arose, as other men do, as is stated in the third *Partida* in the Title treating of the

¹ *Post*, 667.

execution of judgments.² And although the Holy Church has other orders, as will be explained hereafter, these privileges prelates of higher rank possess over all other ecclesiastics.

LAW LXVI.

All Christians Should Honor Prelates of Rank.

Patriarchs, primates, archbishops, and bishops, deserve to be honored and respected on account of the positions which they occupy, concerning which we have already spoken in preceding laws; and this honor should be manifested in three ways; first in thought, second in word, third in deed. That of thought is they should believe they hold the places of the Apostles, as above stated, and that they are mediators between God and the people, to pray for them, and that their prayers should be heard with respect to such things as they ask for with justice, for thus Our Lord Jesus Christ spoke to the Apostles: "What you ask of me in prayer believe that I will grant it to you, and that you will obtain it." The honor due to them by word is that they should be called lords, on account of the honorable positions of the Apostles which they hold, as has been stated, and because they are the guard of souls. The honor in deed to which they are entitled is that persons should rise up in their presence, and receive them kindly, and show them reverence in other things, according to the custom of the country.

² *Post*, 819.

TITLE VI.

On Priests and the Things Which It Is Their Duty to Do, and Those Things Which Are Forbidden Them.

Our Lord instituted nine orders of angels in the celestial church, placed each one of them according to his rank, granted to some superiority over others, and gave them names corresponding to their duties; for which reason, in imitation of this, the Holy Fathers ordained nine orders of priests in the terrestrial church, granted to some precedence over others, and gave them names according to what they had to do. This was done for three reasons: First, as the angels praised God eternally in heaven, so, in imitation of this, that priests should praise God on earth; second, that they might perform their duties with greater regularity, and better; third, because where there are superiors and inferiors, the inferiors should acknowledge the supremacy of their superiors, and be obedient to them, and attentive to their welfare: and that the superiors might love their inferiors, making use of them, and protecting them in their rights. Of the ranks of orders, the first is called, that of the Tonsure, the second, the Custodian of the Wafer, the third the Reader, the fourth, the Exorcist, the fifth the Acolyte, the sixth the Subdeacon, the seventh the Deacon, the eighth the Priest, the ninth the Bishop. The Holy Fathers also deemed it proper, for another reason, that these ranks should exist in the Holy Church namely: that men could obtain, by their means, true union of love and peace which might be lasting among them. Wherefore, since in the preceding Title we have treated of bishops and other prelates of higher rank, it is proper here to treat of other priests of inferior dignity, to show why they are so called; how many kinds of them there are; what they should do, and what avoid in their office; who are not eligible to receive this clerical order; in what way they should live and act worthily; what privileges those enjoy who receive it; for what reasons they lose it; and how, and in what way, they should be respected and honored.

LAW I.

What the Word Priest Means, and Who Ought to Be So Called.

Priests mean those chosen by the lot of God. This is shown in two ways. First, because they have to repeat the Hours, and conduct all the religious services as established by the Holy Church. Second, because they should consider themselves fortunate in having been selected to live upon what is donated by Christians to God as, for instance, tithes, first fruits, and offerings. For which reason all those who are ordained with the Tonsure, or with an order superior to this are usually styled priests, whether of high or low degree.

LAW II.

Why Those Are Called Holy Fathers Who Established the Regulations of the Holy Church.

All those who established the regulations of the Holy Church are called Holy Fathers. This is done for two reasons. First, because they were holy in their lives and in their deeds. Second, because they promulgated holy ordinances. They are called Fathers, because they bring up Christians spiritually in the above named holy establishment, as temporal fathers bring up their children. They made a distinction among priests, for some were

placed in cathedral churches and were of higher rank by reason of the honor of the positions they occupied, as, for instance, deans, provosts, priors, archdeacons, and those called in some churches, precentors, and in others, subchanters: and some they designated treasurers, or sacristans, others, teachers of divinity. Others they placed in collegiate churches which were not under the control of bishops, in each of which were canons and other persons, according to the custom which began to be practised when these churches were founded. In addition to these, there are others called parish priests, subject to a superior in each one of their churches, who has the care of the souls of the parishioners, and these have a superior called an archpriest, who has supervision over many parishes. But all those above named, although of so many different kinds; are either priests, deacons, or subdeacons, or belong to all the four orders, or to one of them, or only to that of the Tonsure; for no one can hold a benefice in the Holy Church unless he has received one of these orders.

LAW III.

What the Words Dean, Provost, and Prior Mean, and What Their Duties Are.

A dean is the first and most important personage in some cathedral churches, with the exception of the bishop: and dean means, in Latin, a man who is old and white-haired; for, as a man who is white-haired certainly should be prudent, reserved, and of good habits, so also, a dean should be so among the other ecclesiastics of the church, on account of the dignity of the place which he holds. Dean in Latin, also means in our language a chief of ten; and formerly, when cathedral churches were poor, it was the custom in some of them to divide the priests into companies of ten, and place over each of these a chief, who was called the dean. And, because the office of dean is ordinarily more honorable and greater than others in most churches, (that of bishop excepted) for this reason he should be more honored in the choir and in the chapter, and be obeyed in all things which are proper and just. He has the power to try those in the church in the same manner as an ordinary judge, and can suspend and excommunicate those who deserve it, and compel such as have committed faults to correct them. This power which deans possess over others they derive rather through long continued custom, than by written law. There are other cathedral churches in which there are provosts and priors, who hold the same office which deans do, and have the same authority. The word *praepositus*, in Latin, means, in Castilian, a man appointed over others, (the bishop excepted) and prior, in Latin, means, in Castilian, first in rank, and superior to others, under the bishop.

LAW IV.

What the Word Archdeacon Means, and What Duties He Has to Perform in His Office.

The word archdeacon in Greek, means, in our language, chief of the gospellers. And, for the reason that archdeacons are the vicars of the bishop, the Holy Church deemed it proper to state what they had authority to do; as, for instance, to visit the churches of their archdeaconate and preserve order in them, and hear the complaints which arise relative to the jurisdiction of the Holy Church. They have power over the priests of their churches, and can try and punish them, and compel them to correct their own faults and those of others; unless those faults should be so serious that they cannot be made to correct them without the intervention of the bishop. It is their

office to teach them how to live in an orderly manner, and how to perform their duties properly. They should also preach to the people and explain to them the true belief, and show them how to avoid committing sin. For all these things they are required to give an account and a reason to Our Lord Jesus Christ on the Day of Judgment. And because of all this which they have to do, St. Clement, the Pope said, that the archdeacon was, as it were, the eye of the bishop, because he had to see all the things which were improperly done in his archdeaconate; for it is his duty to see them, cause them to be corrected, and communicate them to the bishop that he may punish them, and correct them. And still more than this archdeacons have to do, for it is their duty to examine priests when they apply for ordination, as to whether they know how to read, sing, and translate, and whether they are persons of such character as to be worthy of the order they apply for, and afterwards to present them to the bishop. They cannot, however, give them letters to other bishops to ordain them, unless by command of their own bishop. Nor can they appoint any priest to have the care of souls without the order of their bishop, unless in certain churches where this has been the custom for a long period of time. Moreover, priests who are applicants for benefices must first be examined by the archdeacon to ascertain whether they deserve them, and afterwards he must present them to the bishop, that he may confer the benefices upon them; and, after the bishop has granted his consent, it is their duty to put them in possession of their livings. When a bishop desires to create an archpriest, the archdeacon must be present, and if an archpriest should act in such a way as to lose his office, the archdeacon must be present with the bishop when the latter deprives him of it; and this is the case because the archpriest, is the vicar of both the archdeacon and the bishop. It is the peculiar privilege of the archdeacon to induct into office the abbots and the abbesses whom the bishop creates in his archdeaconate. Moreover, the archdeacon has authority to suspend and excommunicate when they deserve it the priests as well as the laymen of his archdeaconate, and to forbid the service to be held in churches according to the custom which prevails in them.

LAW V.

What the Words Precentor, Subchanter, and Chanter Mean; and What Are the Duties of These.

Precentor means singer, and it is his duty to begin the responses and hymns, and the other chants which must be sung, songs sung in the choir and in the processions outside of it; and it is his duty to order what shall be read or sung, and the acolytes, and leaders, and psalmodists must obey him. There are some cathedral churches in which subchanters have the same duties of precentors, and subchanter means the leader of the choir who begins the chants. There are also other churches in which there are *primicerii* who perform the same duties as precentors: and *primicerius* means, in Latin, the first in rank in the choir, who begins the chants, and orders and directs others how to sing, and to walk decorously in the processions. The proper rank of this office can be better ascertained through the custom in use in different churches, than by any written law.

LAW VI.**What the Words Treasurer and Sacristan Mean, and What Are the Duties of These Offices.**

The word treasurer means keeper of the treasure, for to his office belongs the care of the crosses, chalices, vestments, books, and all the other ornaments of the Holy Church; and it is his duty to arrange the altar, and to keep the church clean and in good order, and supplied with incense, tapers, and such other lights as are necessary. Moreover, he should have charge of the consecrated oil, and order and direct how baptism shall be performed. It is also a part of his duties to have the bell rung. There are some churches in which the sacristan holds the same office as treasurer. The word sacristan means the same in Latin, as in Castilian, that is, a man appointed to have charge of sacred things.

LAW VII.**What the Name Master of the School Means, and What His Duties Are.**

Master of the School means, master or provider of schools, and it belongs to his office to provide teachers for the church, to instruct the boys how to read and sing, and it is his duty, as well, to correct the books read in the church, and to correct those who read in the choir, when they make mistakes. It is also a part of his office to be present when scholars are examined in those cities where there are universities, to ascertain if they are sufficiently learned to be appointed teachers of grammar and logic, or of any of the other subjects; and such as he thinks deserve it, he can appoint to read as teachers. This officer is called chancellor in some churches, and he is so named because it is his duty to draw up the letters relating to the business of the chapter in those churches where he is thus designated.

LAW VIII.**What the Word Archpriest Means, and What Duties This Officer Has to Perform.**

The word archpriest means chief of the priests, and this is the case because he has authority over them in matters which we shall mention hereafter. Archpriests are of three kinds, two of them are attached to cathedral churches, and hold offices like those of deans; in some cathedral churches there are others who do not hold similar positions; and there are also other archpriests of inferior rank who are placed over the cities of bishoprics. Those of the first class who occupy the positions of deans, are of higher rank than archdeacons, and should reside constantly in the cathedral church rather than elsewhere. It is their duty to have supervision over all priests belonging to the churches where they are archpriests, and over all the other priests of the city, according to the custom observed in each locality. When there is no bishop in the church they must say mass in his place, or order others to do so. The other archpriests in cathedral churches, although they do not occupy so prominent a place as deans do, have the same duties to perform as the others; unless they are of inferior rank to the archdeacons and are required to obey them. The third kind are those who are placed over the cities of bishoprics, and are inferior in rank to those of the cathedral churches; each of them is required to obey his archdeacon, and by this is understood what is mentioned in the fourth law preceding this, that is, that they should be appointed by the archbishop and the archdeacon, and that they must remove them when they give cause for it. The things which these archpriests

have to do are the following: they must examine and visit all the churches of their jurisdiction, also those of the towns, and the villages as well; learn how the priests live, and how they perform their duties; ascertain also what lives the laymen lead, and if they find that any of them have committed any fault, they must make them correct it, and punish them that they may not repeat it in the future; and if their offences are such that they cannot punish or correct them, they must communicate the facts to the archdeacons or the bishops, that they may punish them: and they have authority to excommunicate and suspend, just as archdeacons have, as has been stated in the fourth law preceding this.

LAW IX.

What Is Meant by the Word Priest, and What Things He Has to Do in the Discharge of His Duty.

Priest means, in the Greek language, an old man. But by this is not understood age as reckoned by time, but by the dignity of the place he holds, for, in ancient times, they were accustomed to call those old who occupied honorable positions, and performed great deeds, and even today the Moors and the Jews use the word in this manner. Priests who celebrate high mass have another name in Latin, for they are styled *sacerdotes*, meaning holy chieftians, for, in reality, they are of higher rank, with respect to their orders, than other ecclesiastics (bishops excepted). They also bear this name for another reason, because they administer the sacraments of the Holy Church which Christians receive from them, with the exception of Confirmation, which no one has the right to administer but the prelates. In ancient times it was customary to call bishops priests. This name of priest, or *sacerdos*, means in our language one who says mass, and whose duty it is to consecrate the body and blood of Our Lord Jesus Christ. It is also his duty to preach to the people, and after mass give them the benediction, saying to them, may God the Father, Son, and Holy Spirit bless them, and omitting the intermediate words which the bishop repeats. Priests also have the power to reconcile excommunicated persons when they see that they are at the point of death; causing them first to swear that they will be subject to the command of, and will obey the Holy Church.

LAW X.

What The Words Deacon and Subdeacon Mean, and What Duties They Have to Perform by Reason of Their Offices.

Deacon means a servant, in Greek. It is the duty of the deacons to serve the priests when they say mass, and they offer the bread and wine with which is consecrated the body and blood of Our Lord Jesus Christ: and it is their duty to repeat the Gospel which relates his deeds, and for this reason they are called readers of the Gospel: they have authority to preach, to baptize, and to impose Penance at the hour of death, when there are no priests at hand: they are also known by another name, for they are called Levites, and this is the case because the first of them belonged to the lineage of Levi, one of the children of Israel. Subdeacon means inferior in rank to deacon. It is their duty to serve the deacons and give them the bread and wine for the sacrifice, as mentioned above, and they must stand behind the former, when they say mass. It is also their duty to repeat the Epistles, and for this reason they are called readers of the Epistles.

LAW XI.**What The Name of Each of The Four Minor Orders Is, and What Are The Duties of Those Who Have Them.**

The rank of Acolyte is the most honorable of the four minor orders, and means, in Greek, he who bears the taper; and this is the duty of the acolytes when the Gospel is repeated, and also when the host and the wine are about to be consecrated. They carry these tapers as a symbol that we believe that Our Lord Jesus Christ is the true light, and for this same reason tapers are burned during mass, and mass should not be said without them. It is also the duty of the acolytes to carry the water, and give it to those who serve at the altar. This order was first instituted by the old law, and began in the time of Moses and Aaron, who was the first bishop of the Jews. The Exorcist belongs to another order, and the word means conjuror, for he has power to exorcise devils in the name of God, in order that they may come out of men and never enter them again. For this reason he must learn the exorcisms by heart, that he may be able to repeat them fluently whenever there is need of it, and this King Solomon, first of all, did. Another order is that of Reader, which means one who reads; and he must be a person who knows how to read the prophecies and lessons aloud, separating the words as should be done, that those who hear may the better understand. Custodian of the Wafer is another order, which means gate-keeper. Under the ancient law these stood at the doors of the temple, taking care that no one entered it who was not clean, and respectable; and, according to the ordinances of the Holy Church, it is their duty to eject excommunicated persons, and all others who do not belong to our religion, and it is also their office to welcome all Christians. The order of the Tonsure must be taken to obtain the other orders, as we have already stated, and is the beginning of the priesthood, and the duty of its members is to intone the psalms in the Church, and, for this reason, they are called psalmodists.

LAW XII.**What Men Are Not Eligible to Receive The Orders of The Clergy.**

The clergy is composed of all the orders which we have mentioned. But as there are some men who are not eligible to these, the Holy Church deemed it proper to designate them, and they are the following: for instance, those as are not legitimate, and legitimate means a child born according to law. Of the latter there are three kinds, first one born in regular marriage; second, one born of a woman who was not married, where afterwards the father married her, as the Holy Church commands; third, when the Pope, or someone else by his command, makes a child legitimate; and there is still another reason why one who is illegitimate can receive the above named orders, and that is when he previously enters a religious order; but although those such as are made legitimate, or have entered a monastic order, have the right to belong to the clergy, they cannot, nevertheless, hold any office or benefice, except by permission of the Pope: nor can those do so who are hindered by reason of marriage, in any of the four ways set forth in the Title concerning prelates, in the law which begins: "Anyone who is prevented by reason of marriage." Moreover, anyone who has committed intentional homicide cannot be ordained or make use of any order which he formerly held, as will be shown hereafter.

LAW XIII.**In How Many Ways Homicide Can be Committed by Which Men Are Prevented From Receiving Clerical Orders.**

Homicide is committed in three ways, first, voluntarily; second, accidentally; third, under duress. That committed voluntarily is divided into four kinds; that committed accidentally into two; and that committed under duress into two others; and of each one of these which are impediments to the conferring of clerical orders we shall speak in its proper place, and first of that which is committed intentionally.

LAW XIV.**In How Many Ways Voluntary Homicide is Committed.**

The will is something which induces men to act of themselves, without compulsion by others, and although this may occur in all affairs, we desire here to speak especially of that relating to voluntary homicide, for the reason that it is an impediment to the conferring of orders. This may happen in four ways, as, for instance, by deed, by counsel, by command, or through prohibition. The first, the one by deed, arises when one man kills another with his own hands. The second, that of counsel, when one person advises another to kill someone, or counsels someone else to advise him to do so. The third, relating to command is, when anyone orders another over whom he has authority, saying to him: "I order you to kill such-and-such a person," or "Kill those whom you meet," or where he encourages persons who are fighting by saying to them, "Kill them." For although those to whom he speaks in this way may not be his own dependants, the encouragement he gives them is equivalent to a command, and will inculcate him in the homicide. The fourth, which is that of prohibition, is understood in two ways. First where a person shelters anyone whom others were seeking to kill, and does not forbid him to kill them; second, where persons are trying to kill one another, and some one attempts to separate them, and another party appears and forbids him to do so, and homicide is committed as the result of this prohibition. Wherefore, anyone who has committed voluntary homicide in any of the above mentioned ways, cannot take orders, or make use of those which he previously had; unless the Pope should grant him a dispensation, as has been above stated in the laws which treat of this subject.

LAW XV.**In What Ways Homicide is Committed Accidentally.**

It has been stated in the preceding law, in what way voluntary homicide is committed, and now it is proper to define here that which is committed by accident. This may happen in two different ways; first, where the party committing the homicide is to blame, and is not excusable from punishment; as, for instance, when some member of the clergy is doing something which at the time it was not proper for him to do. This is understood to be the case where he kills a man while riding a horse, or throwing a lance, or pitching quoits, or throwing stones or darts, or shooting a cross-bow, or doing anything of this kind; for although the homicide may have happened accidentally, and he who committed it took every precaution he could to avoid inflicting injury, he cannot excuse himself by saying he is innocent because the homicide occurred while he was doing something he should not have done. For

this reason he cannot make use of the orders which he previously had, or attain to higher ones, unless granted a dispensation by the Pope. The same rule would apply if any member of the clergy should strike a pregnant woman by way of punishment, or should give her herbs for the purpose of medical treatment, or should do anything else, not thinking that she would lose her child as the result of it: and if she should lose it from such a cause, it being born alive, he cannot attain to higher orders or use those which he formerly possessed. The second way in which a homicide becomes free from guilt and escapes punishment, is this: where a member of the clergy commits homicide accidentally, while he is performing some labor which is fitting for him to do, avoiding, as much as he can, the infliction of injury on others: this would be the case where he was repairing bells, or cutting down a tree, or demolishing a wall, or doing something like this, and should tell those who were passing by to take care, doing so in time for them to take warning, and they should not be willing to heed it, and someone should be killed; he who committed the homicide in a case of this kind would incur no blame, and would not need a dispensation to make use of the orders which he already possessed, or to attain to greater ones. If, however, great scandal should arise from such a homicide, or if he who committed it should acquire such a bad reputation on account of it that it would be necessary for him to escape, and he could not do so; he would then require a dispensation. But if he did not take care to avoid inflicting injury when he could, and ought to have done so, as above stated, he cannot make use of the orders which he had when he committed the homicide, or receive higher ones, without a dispensation of the Pope, and this is the case because he was to blame.

LAW XVI.

In What Way Homicide is Committed Under Compulsion.

Compulsion is something which exempts the clergy from punishment, so that although they commit homicide they do not need a dispensation in order to make use of the orders which they previously had, although they cannot receive others of higher rank, unless the Pope should first grant them a dispensation. This happens where an ecclesiastic kills a man while defending himself, not being able to avoid it in any way. An ecclesiastic might commit a homicide in some other manner through necessity, and he who committed it not be able to escape responsibility; and this would be the case when he knew persons were coming to surround his house, or the place in which he happened to be, or were going to kill him; or some other instance of this kind might occur, and he, knowing this, and being able to escape, was unwilling to do so; for if he should commit homicide under such circumstances, he could not afterwards receive holy orders of higher rank, although his bishop could protect him in the possession of those he already had, and permit him to retain his benefices, in order to show him kindness and favor, after he had performed the Penance imposed upon him on account of the homicide which he had committed in this way.

LAW XVII.

A Homicide Committed in the Course of Justice, Prevents Him Who Commits it From Taking Holy Orders.

Where a man who occupies the position of judge causes anyone to be killed or maimed in the course of justice, he cannot afterwards be ordained as an ecclesiastic. This would also be the case where he participates in the

execution of a sentence either by deed, command, assistance, or counsel. And, moreover, where anyone belonging to another religion was a party to the infliction of a penalty of this kind before he became a Christian, the homicide which he has thus committed will be an impediment to his being afterwards ordained; although if he had caused a death in some other way, not in the line of this duty, nor in the administration of justice, if he had been baptized, and wished to receive holy orders, he would not be prevented on this account. This the Holy Church deemed proper for the reason that when a man is put to death by judicial sentence no sin exists, because the law commands it; and since there is no sin, it is not removed by baptism which cleanses all sins, nevertheless a great impediment arises on account of the homicide which a man commits, so that he cannot afterwards be ordained.

LAW XVIII.

Slaves Cannot Receive Clerical Orders, and What Penalty He Deserves Who Knowingly Ordains Them.

No one who is a slave should be ordained, unless he has previously been liberated. However, if anyone should ordain him (unless he was a freedman or free born) without the knowledge of his master, or where the latter knew it, and forbade it when they desired to ordain him, and makes a demand for him, although he may already have been ordained in some order, he should be returned to his master. But where his master knows, and does not forbid it, thereafter the slave shall be free and the master cannot claim him as his. And if the master did not, and the bishop who ordained him, and he who presented him for ordination did, know that he was a slave, they must furnish his master with two slaves as good as he; and if one of them knew it and the other did not, he who was cognizant of the fact must furnish him with two such slaves, and if he should not have the means to do so, he must return the slave to his master. Where, however, a slave is ordained and his master was not aware of it, and the bishop who ordained him, and the party who presented him for that purpose did not know that he was a slave, and he has received the first orders, that is the four minor ones; they must then return him to the person to whom he belongs, just as if he had not received the orders. But if he has been ordained a Reader or Gospeller we decree that he cannot be deprived of the orders, but must give another slave in his stead, and if he should not have the means to do so, he should be returned to his master. If he has been ordained to say mass, he to whom he belongs is entitled to seize his property, and if he cannot find anything, he can take him with him to read the service, or to serve him in some other branch of the office which belongs to a priest; and this is so on account of the dignity of the honor which he has received. And what is mentioned above, namely, that a master can demand his slave after he has been ordained, and again reduce him to servitude in the ways above mentioned; means if he should make said demand within a year after he has been informed of this; for after that he cannot do so, except for one of the reasons mentioned in the laws of the Title which treats of limitation by which ownership of property is gained, or lost.

LAW XIX.

For What Reasons Those Who Perform Public Penance Cannot Receive Holy Orders.

Anyone who has performed Penance publicly cannot receive holy orders, and this is the case for four reasons. First, on account of the exalted dignity of the orders, because this is such an honorable thing that it should not be conferred upon a man who has so deeply sinned that he was compelled to per-

form public Penance; for, although the sin was removed by it, the shame and evil report remain, which prevent him from being eligible to ordination. The second reason is, that persons may suspect that he will repeat that sin since he has committed it once. The third reason is, that if he was ordained, it might produce scandal among the people, impelling them to speak ill of those who conferred the order, holding that they erred by bestowing it upon a man who committed so great a fault as to deserve such a Penance. The fourth reason is, that it may be suspected that he, after he has received the order, would not be able to punish effectively those who fell into the same sin which he had committed; for it would always come into his mind, when he desired to reprove them, that he had fallen into a similar error, and, for this reason, he would be ashamed to do so.

LAW XX.

Those Who Receive Baptism Under Pressure of Illness, and He Who Knowingly Is Baptized Twice, Should Not Receive Holy Orders.

He who is well and of full age, and does not wish to be baptized, but afterwards, when he becomes ill, receives baptism through fear of death, cannot take holy orders, and this is the case because it is evident he did not do so willingly, but through fear. A person of this kind, baptized in this manner, can be ordained if he should afterwards recover, live a proper life, and perform his Christian duties: or when the Church where he was ordained has so few ecclesiastics that they are compelled to take him. Moreover, he who was baptized or anointed, or who knowingly received one order twice, cannot be further ordained; however, when anyone does this, it having escaped his mind, he can afterwards receive the orders, (for every man should understand that these are not acts to be performed twice, although he may acquiesce in them, not being certain that they were done before:) wherefore he who knowingly receives the above named Sacrament of the religious order must be deprived of the latter, because he despised the mandate of the Holy Church.

LAW XXI.

For What Reasons Foreign Ecclesiastics, or Such As Are Not Known, Should Not Be Ordained.

The bishop should not ordain a foreigner, or a person who is not known, when he applies with others for ordination, and this for two reasons. First, because a man belonging to another bishopric cannot be ordained or judged by him; and, if this should be done, the person who receives the order cannot make use of it, unless his own bishop should give him permission to do so. The other reason is, that those who leave their own bishoprics and go to others, include some who do so on account of crime or faults which they have committed, or because they have such bad habits that their own bishops are unwilling to ordain them. Moreover, men of this kind very frequently lie, declaring that they have been ordained while they have no order whatever; or they say that they have received higher orders than those they actually possess, in order more speedily to obtain those which they are eager to obtain.

LAW XXII.

No One Can Receive Holy Orders from a Bishop Who Has Renounced His Bishopric.

No one should receive the holy orders from a bishop who has renounced his bishopric, or his dignity. The other orders, however, can be received from

him, for consecrated abbots, who are not bishops, have authority to confer the order of the Tonsure or that of Custodian of the Wafer, or that of Reader. Where persons knowingly receive holy orders from bishops of this kind they cannot use them, but where they have received them without knowledge of the fact, they can use them by permission of their own bishop. But where it is publicly known in the country where they were ordained, that the bishop had renounced his bishopric and his dignity, as has been stated, they cannot then make use of the orders which they have received in this way, nor should their prelates grant them permission to use them, unless they declare they were not cognizant of what had happened, for, where anything is publicly known to all, no one can excuse himself by saying that he was not aware of it. Priests who have received holy orders from a bishop who has renounced his bishopric; but not his dignity, can make use of them if they received them with the permission of their own prelate; unless the Pope, or someone else by his order, should have forbidden him to confer them.

LAW XXIII.

What Offices Prevent Men from Taking Holy Orders.

A person holding any office for which he must render an account to the king, or to a noble, or to a council, or to a district from which he collects a revenue, as, for instance, the office of steward, or one similar to it, is forbidden by the Holy Church to be ordained, and this is the case for two reasons. First, that the church may not suffer injury or loss, through the lords to whom such persons are required to render an account by reason of the offices they hold. Second, because it may be reasonably suspected, with regard to such as wish to take orders, that it is their intention and desire to avoid rendering an account to their powerful lords, rather than to serve God by means of the orders. But where they are obliged to give an account to a widow or to orphans, or to a man who is neither powerful nor noble, as above stated, the clergy should not, for that reason, fail to ordain them. For it is well understood that such persons would not have to account for a large amount of money through which injury might happen to the churches, if they had to pay it for them: nor does it, moreover, seem proper that such men should be arrested. And where an account, as aforesaid, is to be rendered to a bishop or to another ecclesiastic, then they can be ordained; because, according to the law of the Holy Church, no one can be arrested on account of a debt which one ecclesiastic owes to another; and, moreover, the Holy Church deemed it proper that if he who desired to be ordained was otherwise liable, that is, not obliged to account to anyone but for money which he had borrowed, or was indebted to another in some other way, for this reason his superiors should not fail to ordain him. For he who has a claim against him can save his rights, having the power to bring suit for his debt, just as he could have done before he was ordained, and before the same judge who could then have rendered judgment, and who can compel him to make restitution out of his patrimony, as well as out of any other personal property which he may have obtained through his office, or from any other source.

LAW XXIV.

Holy Orders Should Not Be Conferred Upon Any Ecclesiastic Against Whom a Lawsuit Has Been Brought by Reason of His Stewardship, Until It Has Been Decided.

Where a lawsuit has been instituted against any person, relating to property claimed of him, which he has, or should have, in his possession, and con-

cerning which he is required to render an account to anyone, except the king, or someone else who asserts the claim on behalf of the Council, and such a person desires to receive a holy order: if this suit brought against him either before he is ordained, or at the time, was instituted for one of these three reasons, namely: because of his obstinacy in refusing to render an account, or by reason of fraud he has committed with regard to the property in his possession, or because he was to blame in not taking care of it, or in not making collections as he should have done; and this was due to fraud, or obstinacy; he should not be ordained, until the said lawsuit is terminated, and the judge who is to hear it must appoint a time when it can be determined. Where the suit was brought on account of neglect, as above stated, he can still be ordained, although his adversary may oppose it; for his rights are protected afterwards so that he can ask for judgment, as well as formerly, before the same judge. Where, however, no one asserts such a claim against him, they should not fail to ordain him, although he may be required to render an account; unless it should be notorious that he had committed some fraud with regard to the property which he held, for, in this case, he should not be ordained when found to have such a reputation.

LAW XXV.

By the Possession of What Members a Man Is Said to Be Perfect, or Not, So That He Can Receive the Holy Orders.

A man's form is perfect when all his members are complete and sound, and he who is not such, can not in a manner be called a perfect man. For this reason the Holy Church did not approve that holy orders should be conferred upon such as these. With respect to the members, this is to be understood in the following manner, namely; whether a man is deficient in any of them, either in those that are visible, or those that are concealed; and concerning those that are visible, whether they are of greater or less importance, and whether he is wanting in such as are called the greater, or which are so on account of their size, as, for instance, the arm, the leg, the foot, or the hand, or on account of the great symmetry which they impart to the body; as, for instance, the eye, the nose, the ear, or the finger, for if a man should be lacking in any of these members, for any reason, they should not confer a holy order upon him. Where he has lost any of those concealed members, which it is immodest to mention, either through violence, or from any accident which happened to him, or where such a member was removed through fear that he might contract some serious illness, and this was done by the advice of physicians, they being persons skilled in such matters, they should not fail to ordain him for this reason. But where he removes any of these members with his own hands, or voluntarily causes others to do so, he should not be ordained. And where he is lacking in any of the inferior members, as, for instance, in a tooth, or a toe, this is no impediment to his ordination; nor, moreover, where he is deficient in any part of a finger, unless that defect should be of a kind to cause great deformity, or prevent him from grasping the host, or breaking it, when he performs the sacrifice. Moreover, persons can be ordained who have six fingers on one hand, or who have one eye larger than the other, or have both eyes very small; for this is rather a deformity, than a deficiency in the members. Such defects as these, however, which come under the head of ugliness, the Holy Church, with good reason, deemed proper should be passed upon by the actual inspection of him whose duty it is to confer the orders, rather than settled by any regulation established with regard to the matter.

LAW XXVI.**Women Should Not Receive Clerical Orders.**

No woman can take a clerical order, and if one should happen to receive it when the bishop confers the orders, he must deprive her of it. And this is the case because no woman can preach, even if she is an abbess, or bless, or excommunicate, or absolve, or impose Penance, or sit in judgment, nor can she make use of any clerical order, although she may be good and holy. For although Holy Mary, the Mother of Jesus Christ, was greater, and of higher rank than all the Apostles, he was unwilling to confer upon her the power of absolution, but gave it to them because they were men.

LAW XXVII.**Of What Age Those Must Be Who Desire to Receive a Clerical Order.**

The law of the Holy Church prescribed a certain specified age which ecclesiastics had to attain before they could take clerical orders, for where they had not reached said age they were not entitled to receive them: wherefore, if anyone was devoted to the clergy from a child, from the time that he was seven years old until he was twelve, he was eligible to the order of the Tonsure, and the other minor orders up to that called acolyte; after he had reached the age of twelve years, he could become an acolyte; after twenty years a subdeacon; when he had reached the age of twenty-six years he could receive the order of deacon; and, when he had reached the age of thirty years, he was entitled to receive the order of priest. If, however, anyone had a parish church, or was a dean, archpriest, or abbot, he could be ordained to say mass after he was twenty-five years old; and this was on account of those offices which he held. But where any layman desires to take clerical orders after he has reached the age of eighteen, and petitions to be ordained, he can receive all the orders in seven years as follows: in the first two years he can receive that of the Tonsure, and the four minor orders; and during the other five years, he can be ordained with all the other greater orders, namely those of subdeacon, deacon, and priest. He can, however, receive, by permission of his prelate, all the orders in a year and a half, where some good reason exists why this should be done; as, for instance, where he is a man of very exalted rank, or highly educated, or of good life, or for the reason that the church is unsupplied with priests. Moreover, he who enters a monastic order can receive all the orders in one year. Thus, at such ages, and in the way mentioned in this law, and not in any other, bishops can confer the orders, and they should not ordain many ecclesiastics unless in strict conformity to law; for the Holy Church rather desires that these be few in number and good, than numerous and without efficiency. Moreover, no one should confer two holy orders in one day, or one holy order along with the four minor orders, nor should the four minor orders be conferred in one day, unless it should be the custom in some church to confer them within that time: and the impediments which we have mentioned in these laws should not only be considered applicable to those who are to be ordained priests, but also as affecting such as are to be elected bishops.

LAW XXVIII.**Ecclesiastics Should Not Receive Holy Orders by Stealth.**

Every man commits a theft who takes the property of another without the owner's knowledge, or contrary to his will. And, in like manner, he who takes orders without the knowledge of his bishop commits a theft and ought

to be punished for it: and he who receives them in this way, and is ordained by another bishop without the permission of his own; or he who receives two orders in one day without the knowledge of him who ordained him, should suffer the following penalty, namely; he cannot make use of the orders which he received in this way, or of any other that he may have previously received, and he must also lose the benefice which he held at the time he was ordained, on account of the order which he received by stealth. Moreover, a bishop who confers the four minor orders and that of subdeacon on one ecclesiastic in one day or who confers two holy orders; or who confers orders knowingly, at an improper time; loses the power of ordination until the Pope grants him a dispensation; and he who takes an order before he has arrived at the proper age to receive it, as stated in the preceding law, must be forbidden to use it until he arrives at the age when he is entitled to do so. This is the case on account of the contempt of the person who ordained him, and the bishop who conferred the order must be forbidden by his superior to confer orders, and must be compelled to give him whom he ordained at an improper time a benefice, by means of which he can live. The Holy Church also deemed it proper that if any priest should pass from one order to another, omitting any of the intermediate ones; as, for instance, that of the Epistle, and omit the intermediate order of the Gospel and be ordained a priest, he must not be permitted to use the order which he received in this way, or the other which he formerly had, until he has performed the Penance which his prelate ought to impose upon him, and have received the intermediate order which he omitted.

LAW XXIX.

Ecclesiastics Should Not Make Use of Orders Which They Have Not Received.

No ecclesiastic should make use of an order which he has not received, as, where he is entitled to read the Epistle, he should perform the duties of the Gospeller, or where he is entitled to read the Gospel and should say mass: and where anyone acts in this manner he should be forever prohibited from using the order which he had previously received, unless, after he had been forbidden to do so for two or three years, his bishop should desire to confer a favor upon him by giving him permission to make use of it: nevertheless from that time forward he will not be eligible to the higher orders; and if his prelate should not be willing to grant him this favor, he should present him to a benefice, by which he may live, for the reason that he is in holy orders, he not being classed with those who have the care of souls. And this is done because he disgracefully went out of his way to do things which were improper. And, in order that the bishop may be able to do this more securely, he must advise him to perform Penance for the offence which he committed; but, in order that he may be unquestionably secure, the ecclesiastic should enter a religious society, not through force, but willingly, in order that he may the better perform his Penance.

LAW XXX.

For What Reasons Ecclesiastics Who Possess Dignities Can Be Compelled to Take Orders.

A bishop, if he so desires, can sometimes compel the ecclesiastics of his bishopric to take orders, and this he can do even when they are not willing. But the Holy Church did not approve that this should be done without good reason, and commanded that if a bishop wished to compel one of his ecclesiastics to take an order on account of some office or benefice which he possessed;

as, for instance, if he were a deacon who ought to be made an archdeacon, or a dean, an abbot, a prior, or an archpriest, or any other ecclesiastic who should have the care of souls, since every one of these must have the order of the mass; he can do so by forbidding that he should be given the benefices of that office before he is ordained. And where he did not desire to be ordained, he should be deprived of his office, and it should be given to another who is fitted for it: and if, considering himself injured, he should appeal from such a decision, this should not fail to be carried out notwithstanding the appeal. But if, after he had been chosen and confirmed in any of these offices, an impediment should arise, without his fault, on account of which the said ecclesiastic could not be ordained, the bishop should not then deprive him of his office.

LAW XXXI.

When Ecclesiastics Should Be Compelled to Receive Orders, Although They Have No Offices in the Church.

When a bishop wishes to compel any ecclesiastic of his bishopric to be ordained, not by reason of any office he may hold, as was stated in the preceding law, this should be done in the following manner. The bishop should either be induced to use compulsion on account of a scarcity of priests, because there does not happen to be in that locality another person so proper for the position, or for the profit of the church, or not; and if he should do this on account of scarcity, or for the benefit of the church, he will certainly act for a good reason. But where the ecclesiastic upon whom he uses compulsion, refuses to be ordained; or excuses himself by reason of some fault which he has committed, or on account of some other impediment which he says accidentally happened to him; or voluntarily declines, not wishing to be ordained; and his refusal is caused by some fault or crime he has committed, the bishop should ordain another of lower rank belonging to that church who is fit for it, with the order which he had directed him to receive and deprive him of the benefice which he possessed in that church, and give it to the other; unless the former ecclesiastic is very useful to the church, or would cause such a great loss in some other service that he could not be spared, for this reason he may consent to permit him to remain in his benefice. But where a priest declines on account of some other impediment, as, for instance, illness, or for any other cause which may be a temporary or perpetual hindrance to him, and which does not result from some crime which he has committed; he should not then be subjected to compulsion, and if they should persist in using force upon him, he can enter an appeal, and his appeal will be valid: but where he declines voluntarily, not giving a good reason for doing so, the bishop must compel him to obey, by depriving him of his benefice; and in such a case, any appeal the other may make on account of such a decision will not invalidate the act of his superior. If, however, the bishop should wish to compel ecclesiastics, of whom there was no scarcity, to be ordained, and the church would not suffer in its service if this were not done, and they would not be greatly improved by the ceremony, he should not compel them to receive ordination, and if he does so, he should be suspended for the space of a year: for it is evident that he does this rather for some grudge or dislike which he bears the parties, than for any other reason.

LAW XXXII.

Whether Ecclesiastics Who Are Forcibly Ordained Receive Any Impression Upon Their Souls or Not.

The word character means, in Latin, a mark, which is an impression of the thing by which it is made: and of these impressions some are made upon things which are visible, and others upon such as are not: and those which are visible are impressed upon corporal objects by means of a seal of any kind, with iron, or with some other substance which makes a mark, in such a way as to be plain and enduring; and those which are invisible, are made upon the soul, as, for instance, by Baptism, or by a religious order, or by any of the Sacraments of the Holy Church; for, although this is done outside the body, the soul always remains, by this means, impressed within. Wherefore, because some persons have doubted whether one who is ordained through the influence of fear can receive by ordination the impression within upon his soul, or not; the law of the Holy Church made a distinction in this respect, as follows, namely: that if any person should be forced to take an order, by being threatened that he would be deprived of his benefice if he was not ordained, although he gave his consent on account of such fear, since he received the order outwardly, his soul remained impressed within by this means: so that he is required to live without marriage, if at the time he was ordained he was not married, because the holy order has such virtue that although he who receives it may not promise to preserve his chastity, he is nevertheless bound to do so. But if he who is ordained through fear never consented, but constantly refused, he did not receive the order, nor was his soul impressed within by this means, for it is the desire combined with the consent in an individual, which produces the impression upon the soul within.

LAW XXXIII.

Ecclesiastics Ought Not to Be Excluded from Taking Orders Where the Bishop Alone Is Aware of Any Fault They Have Committed.

Some may be in doubt whether a prelate should confer orders, or not, on an ecclesiastic who asks them, he being positively aware at the time, (although it has not been proved, or is publicly known) that this ecclesiastic has committed some great sin, or done something else on account of which he ought not to receive the orders. Wherefore, to remove this doubt, the Holy Church declared that if the ecclesiastic belongs to the secular clergy, whether he has a benefice or not, and should apply for those orders; his prelate must admonish him in the first place, addressing him as the representative of God, and advising him secretly not to receive them, touching on such matters as he is aware may operate as an impediment, and on account of which he should not take them. If, however, the applicant should be unwilling to pay attention to his advice, or should refuse to give up his ordination, the bishop is required to confer the orders upon him. For, since the sin is concealed and cannot be proved, it is better to ordain him, and leave him to the care of God, than to render him infamous on account of something which cannot afterwards be remedied; for God alone, and no one else, is the sole judge of secret sins which are not known to men, or revealed at confession. But where such an ecclesiastic as this belongs to a religious order, he should not be ordained against the consent of his prelate; for the kingdom of God is not obtained by means of the dignity of holy orders, but through excellence of works and good habits. Moreover, if a bishop, although he may entertain a dislike for a priest, has given a command for him to be ordained by the church to which his benefice

belongs, and which has a scarcity of priests, so that it was necessary, at all events, that either this priest, or another like him, should be ordained, he must obey his bishop, and receive those orders with which he commanded him to be ordained: for since what he ordered is not evil, and is a proper thing, and for the benefit of the church, an ecclesiastic is bound to submit, and cannot avoid doing so by saying that the bishop commanded him to be ordained on account of some grudge he bore him.

LAW XXXIV.

Ecclesiastics Must Conduct the Service, and Do Things Which Are Suitable and Good, and Avoid Others.

Ecclesiastics are set apart for the service of God, and, for that reason, they should strive to serve Him as well as they can, as the first law of this Title declared; for it is their duty to conduct the service in the church, and those who cannot come there, should not fail to repeat it wherever they are: wherefore, since they are appointed for this purpose, and have a holy order and a church, each one of them is required to do this. Moreover, they should be hospitable and generous in bestowing their possessions on such as have need of them, and should preserve themselves from evil covetousness, as has been stated above in the Title on prelates, nor should they throw dice, or play draughts, nor be connected with gamblers, or associate with them: nor enter wine-shops, unless compelled to do so on a journey, nor should they make scornful jests, in order that people may visit them to hear them. If other men do these things, ecclesiastics should not be present, because many evil speeches are uttered and indecencies committed there, nor should any such things take place in the churches; for we have previously declared that those who act in this manner should be dishonorably ejected from them; as the church of God is made to pray in, and not for the purpose of uttering scornful jests; for Our Lord Jesus Christ said in the Gospel that his house was called a house of prayer, and should not be made a den of thieves. There are certain representations, however, which ecclesiastics have a right to make, as, for instance, that of the birth of Our Lord Jesus Christ, in which it is shown how the angel appeared to the shepherds, and told them that Jesus Christ was born, and also that of his appearance, and how the three kings of the Magi came to adore him, and the one relating to his resurrection, which shows that he was crucified, and arose on the third day. Representations of this kind which induce men to do good, and have devotion for the Faith ecclesiastics can make, and they are also beneficial, for they cause men to remember that the other events actually happened. These things should be done in an orderly way, and with great devotion, and should take place in large cities where there are archbishops or bishops, and either by their command, or by those of others who occupy their places; and they should not take place in villages, or in vile places, or for the sake of earning money by means of them.

LAW XXXV.

Priests Should Not Abandon Their Churches in Which It Is Their Duty to Conduct the Service, and for What Reasons They Can Pass From One Church to Another.

Priests should not abandon their churches, in which they have to conduct the religious ceremonies and serve God, praying on behalf of the people entrusted to their care: and for the reason it happens at times that they wish to move from one church to another, the Holy Church declares for what rea-

son they can do so. She makes a distinction as follows: for instance, whether the church to which the priest desires to go belongs to the same bishopric, where the other church to which he was attached was located, or whether it belongs to another. Where it belongs to the same bishopric, the ecclesiastic has a right to change, if his bishop is aware of it, and gives his consent thereto, for he still remains under his jurisdiction, and therefore there is no reason why he should be removed. Where, however, the ecclesiastic is subject to another prelate, who was of lower rank than the bishop of the district and the church where he desires to go, he is not subject to this same prelate, nor can he go to that church, if the ecclesiastic of inferior rank, to whom he is subject, should not grant him permission. If, however, he should desire to change to the church of another bishopric, in order to be able to do so, his own bishop, and also the minor prelate to whom he is subject, if there is one, must grant him permission.

LAW XXXVI.

Ecclesiastics and Others Should Not Utter Scoffing Jestings While Clothed With a Religious Habit.

No one should wear a religious habit except such as assume it for the service of God, for there are some who wear it with evil intent to mimic monks, or to ridicule other, or play jokes upon them; and it is a very outrageous thing that what was contrived for the service of God should be turned into contempt of the Holy Church, and employed for the vilification of religion; for which reason anyone who clothes himself in the habit of a monk, a nun, or a priest, should be driven out of the town or village where he did so, with a scourge. And if a priest does a thing of this kind, as it would be worse in his case than in that of another man, his prelate should inflict severe punishment upon him, according as he thinks proper; for prelates, like secular judges of every district, must punish such offences severely, to prevent them from being committed. Moreover, neither ecclesiastics nor laymen should frequently visit monasteries occupied by nuns, unless there is a reasonable and manifest cause for their doing so; and where anyone does the contrary, after he had been warned by his prelate, if he is an ecclesiastic, he must suspend him from the service of the church, and if he is a layman, he should be excommunicated. This the Holy Church commanded for the reason that if men went frequently to such places, suspicions of an evil nature might arise which would affect both parties.

LAW XXXVII.

Ecclesiastics Must Be Virtuous, and What Women Can Live With Them.

Honestas, in Latin, means, in Castilian, the perfection of good habits, which causes man to live a clean life according to his station, and this becomes ecclesiastics more than others, since it is their duty to perform so many holy and honorable acts, as, for instance, to consecrate the body of Our Lord Jesus Christ, to administer the Sacraments, to attend to the altar and to serve the church, it is eminently proper for them to be clean and virtuous, and to guard themselves from those faults which tarnish a good reputation: and one of the things which most degrades the virtue of ecclesiastics is to have too great familiarity with women. In order to protect them from this fault, the Holy Church deemed it proper to designate that women could live with them without evil report, and these are the following: the mother, grandmother, sister, and paternal or maternal aunt; a niece, the daughter of a brother or a sister; a man's own daughter whom he had by marriage before

he received holy orders; his daughter-in-law, wife of his legitimate son, and any other woman who is his relative in the second degree, as, for instance, his first cousin. These can live with priests for the reason that, as the relationship existing between them is so near, it does not cause men to suspect evil. And although they may have with them female relatives such as those above mentioned, they must not entertain other women concerning whom it may be suspected that the priests commit sin with them, and if they should entertain them, they must not dwell with them; and with regard to this St. Augustine coined a proverb that coincides with the above regulation namely: "All sisters who live with their brothers are not their sisters;" and for this reason a man should sometimes avoid doing things which are in themselves reasonable, if he knows that they are of such a character that, by means of them, he may be led to commit improper acts, or become liable to evil suspicions.

LAW XXXVIII.

Priests Must Not Keep Women of Suspected Character in Their Houses, Even Though They Are Their Relatives.

Such women as are mentioned in the preceding law may live with priests by reason of relationship. They must, however, take care not to have great intimacy or associate too much with them; since, through the wiles or deceit of the devil, some priests commit faults or sins with their female relatives, and may also act in like manner with others who live with them. For this reason the Holy Church forbids that where an ecclesiastic is a person of this kind, or the female relative who lives with him is of such a character that he may suspect that he will commit such a sin with her, they must not live together. Where, however, his relation is so poor that he cannot avoid taking care of her, she must live at a distance from the ecclesiastic's house, and he must take the best of care of her there that he can, and the other said female relatives a priest must not keep in his house, if any suspicion should arise against him that he is committing sin with them. This he must also beware of in the case of other women with whom he has no relationship; and when such a suspicion arises against a priest, his bishop must admonish him to remove it; and if he should not be willing to do so, he must deprive him of the benefice which he received from the church, and forbid him to conduct the service there. Moreover, the Holy Church commands that where anyone has been ordained a Reader of the Epistles, or an ecclesiastic of higher rank with the permission of his wife, whom he had previously married; if she is very old, she must promise to be chaste, and live apart from him, and, if she is a young woman, she must enter a religious order; just as she would do when he took orders with her permission.

LAW XXXIX.

In What Respects the Ecclesiastics of the East Agree With, and Differ From Those of the West.

Formerly, in the early days of our religion, all ecclesiastics were accustomed to marry, as they had the habit of doing under the old law of the Jews. After this, however, the ecclesiastics of the west, who always obeyed the church of Rome, agreed among themselves to live in chastity; for they deemed it to be exceedingly proper that those whose duty it was to consecrate the body of Our Lord Jesus Christ, and administer the Sacraments of the Holy Church to Christians, should be chaste. The ecclesiastics of the east were not willing to promise this, for they deemed that it was better, and less dan-

gerous to marry, than to promise chastity, and not keep their promise; and, for this reason, there is a separation between the eastern and western ecclesiastics. Nevertheless, there are some things concerning marriage in which they agree, and others in which they differ; and those in which they agree are the following; in both churches ecclesiastics who have received the four minor orders can marry, and they cannot marry after they have received the consecrated orders, and if they should, the marriage will not be valid. The points on which they do not agree are the following: the priests of the east, whether they are married or not, are entitled to receive the holy orders without promising to observe chastity, but those of the west cannot do this, without giving this promise. There is also another point on which they differ; eastern priests can receive holy orders while married, without repudiating their marriage for that reason, but it is rather their duty to live with their wives, as they formerly did; but those of the west cannot do this, for after they receive these orders they cannot live with their wives.

LAW XL.

Concerning The Hindrance Affecting Women Who Have Husbands When The Latter Receive Holy Orders.

An impediment, sometimes arises with respect to women, so far as their marriage is concerned, on account of the holy orders which their husbands receive: for where the priests of the west, concerning whom mention has been made in this other law, are ordained with the knowledge of their wives, and the latter consent to it and do not oppose it, but are silent, they are liable to two embarrassments on this account: first, from that time forth, they are bound to promise to live in chastity, and not dwell with their husbands; and second, after their husbands are dead, they are not permitted to marry, and if they should do so, their marriage will not be valid. There are two reasons for this. First, on account of the vow of chastity which belongs to holy orders, as was stated above. Second, because the Church forbade, where ecclesiastics who belong to consecrated orders have wives, and they marry after the death of their husbands, that such marriages should be valid. Moreover, the wives of eastern priests are subject to embarrassment in two ways on account of the holy orders which their husbands receive. One is that they cannot marry after the death of their husbands, whether they do, or do not, oppose his ordination. The other is that none of them should have sexual intercourse with their husbands in any week when he has to conduct the service. And although it is stated above in this law that the holy orders which western priests receive, are a source of embarrassment to their wives with regard to marriage; nevertheless, if when they know that their husbands are about to take orders, they oppose it, or if the former are ordained without their permission or knowledge, no injury results to them from either of these things; for they can request their husbands to live with them, and fulfil their marital duties, but the husbands cannot ask this of their wives, because they are required to be chaste on account of the order which they have taken. Moreover, where an ecclesiastic has received a holy order, and his wife makes a request of this kind, and he interposes the prohibition that in such a case she would commit adultery; if proof of this is established, he will not be required to abandon the order and live with her.

LAW XLI.**Concerning Ecclesiastics Who Marry While in Holy Orders, and What Penalty Should Be Imposed Upon Them and on the Women They Marry.**

When an ecclesiastic who has taken holy orders marries, his punishment should not be long delayed, for he must be deprived of his office, and the benefice which he obtained from the church taken from him by sentence of excommunication, until he leaves his wife, and performs Penance for this sin. Where the woman is a vassal of the church, and was aware that he whom she married was a priest, the bishop must reduce her to the slavery of the church; and if he cannot do this himself, he should apply to the king, or to the lord of the land for assistance to do it; and where the woman is a slave, he must sell her, and use the price received for her for the benefit of the church to which the ecclesiastic belongs who married her. The children born of such women shall become slaves of the Church, and cannot inherit the property of their parents. The Holy Church also commands that any priest who receives holy orders with the consent of his legal wife, and she promises to remain chaste, as is stated in the preceding law, and he afterwards returns to her, shall lose the benefice which he has, and be forbidden to use the order which he had received.

LAW XLII.**On the Oath Which Ecclesiastics and Other Men Must Take When They Separate from Their Wives.**

Where a bishop separates ecclesiastics, as is stated in the preceding law, from the wives whom they married, because they were united to them against the prohibition of the Holy Church, he must compel them to swear, that from that time forth, they will not have sexual intercourse with them, or eat, drink, or remain under the same roof with them, unless in the church, or in some other public place where no evil suspicion can arise against them; and that, even while there, they will not speak with them apart, unless in the presence of good men and women, and not then, except for some good and proper reason for which they must do so. And if any ecclesiastic should commit adultery with a married woman, his bishop must expel him forever from his bishopric, or cause him to be shut up in some monastery where he may perform Penance for his entire life, and this is the case because the sin is very great and disreputable.

LAW XLIII.**Priests Must Not Keep Concubines, and What Penalty They Deserve if They do so.**

Ecclesiastics are always bound to live in a chaste manner, especially after they have taken holy orders. And, the better to observe this, no other women should live with them except those mentioned in a preceding law: and if it should be ascertained that they entertain others concerning whom suspicions may arise that they commit the sin of incontinence with them, their prelates must forbid them the use of their office and their benefices, if the sin is established, by a decision rendered against anyone of them in a case of this kind, or where the guilty party acknowledges it in a lawsuit; or where the sin is so notorious that it cannot be concealed, as, for instance, where he kept the woman openly in his house and had a child by her. The parishioners of a priest who lives in such sin ought not to hear him read the service, or receive from him the Sacraments of the Holy Church. Moreover, he who is found to keep such a woman knowingly, as has been stated, must be notified by his prelate to separ-

ate from her, before he deprives him of his benefice; and if, as the result of this, he is not willing to leave her, or reform, he should be deprived of his benefice for a certain time; and if, within that time, he is still unwilling to separate from her, he should be deprived of it forever. A woman who lives in this way with an ecclesiastic should be confined in a monastery, that she may do Penance there for her entire life.

LAW XLIV.

What Measures Prelates Should Take Against Ecclesiastics Whom They Suspect of Secretly Keeping Concubines.

When an ecclesiastic becomes of evil repute because he keeps a concubine secretly, though no one may accuse him of it, the bishop, after he becomes aware of the fact, must command such a person to prove that he is not guilty of the sin of which he is suspected, and this proof must be made in such a way as his prelate shall deem proper. If the party should not be willing to clear himself, or cannot do so, he must be deprived of his benefice, and forbidden to conduct the service in the church. His parishioners, however, should not avoid hearing such a man repeat the service or administer the Sacraments, so long as his prelate permits him to conduct it, and serve the church. The Holy Church not only forbade ecclesiastics to live with concubines, but even to speak with them privately. Where it happens that they are obliged to do this for some good reason, they should have some companions with them, in order that those who see them may not suspect that they are acting with evil designs.

LAW XLV.

Ecclesiastics Should Not Be Sureties, Stewards, Landlords, or Clerks of Councils or of Secular Lords.

Ecclesiastics who are of the rank of subdeacon, or of higher dignity, should not be responsible for the revenues of the king, or of any other lord of the land, or of a council, or enter into any contract relating to the rents of estates belonging to others, or those of the property of orphans. They may, however, give security for one another in their contracts, or in their churches, or for men who are in distress in order to render them assistance. Nevertheless, if they should enter into any of the obligations which are forbidden them, the security will be good, so far as any property they own is concerned, but neither their persons nor their churches should be bound on their account; and their prelate must impose such a penalty upon them as he thinks proper, because they meddled in such matters. Moreover, they should not be stewards, or landlords, or collectors in the affairs above mentioned where they cannot be sureties; and if they should become such, they must be proceeded against as is set forth in the laws which treat of this subject: unless where the priest is of very limited means, for he can then rent property, and manage the lands of others by which he may be assisted to obtain the necessities of life. And, though ecclesiastics are not allowed to be responsible for the property of minors; they can nevertheless have charge of them and their property as guardians, if they desire to do so, and the relatives of the orphans are willing, and they give security that they will take care of it for them, as is stated in the Title treating of orphans, and their guardianship. This same rule applies to ecclesiastics who are selected to take care of the property of some of their relatives who have become insane, or have lost their minds. The Holy Church also forbade an ecclesiastic to be the clerk of a council, and if he should become such, and not be willing to relinquish his office, his prelate can compel him to do so by depriving him of the benefice which he held, until he does relinquish it.

This is done on account of his personal dignity, that he may not have to do something by which he may be guilty of an irregularity, or for which he may be liable to arrest.

LAW XLVI.

What Kinds of Trade Are Forbidden to Ecclesiastics, and What Kinds Are Not.

There are many different branches of trade, and there are some of them in which no man can engage without committing mortal sin, for they are wicked in themselves; as, for instance, usury and simony, and these are forbidden to ecclesiastics, as well as to laymen. There are others which are also forbidden to all, and especially to ecclesiastics; as, for instance, to buy and sell goods with a desire of obtaining a profit from them: for it is difficult for a man to engage in trade where some sin is not committed either on the part of the purchaser or on that of the vendor. If, however, an ecclesiastic knows how to write well, or to do other things which are honorable; as, for instance, to draw up papers, or to make boxes, nets, panniers, or baskets, or other things of this kind, the Holy Fathers considered it proper for him to do them, and to sell such articles without disparagement of his order, and to receive profit from his labors, if he was poor, provided this was done in a suitable way.

LAW XLVII.

What Things Are Forbidden to Ecclesiastics, and What Are Not.

Ecclesiastics should not be hunters or pursuers of game, no matter what order they belong to, nor should they keep hawks, falcons, or dogs to hunt with. For it is highly improper to waste upon things of this kind what they are bound to bestow upon the poor. They are, however, authorized to fish and hunt by means of nets, and to lay snares; for hunting-like this is not forbidden them, because they can do it without birds, or dogs, and without noise. Nevertheless, they should practice it in such a way that neither their prayers nor the service which they are required to conduct and repeat may be interfered with. Moreover, they ought not to chase game, or fight with wild beasts, or risk themselves with them for the sake of any reward which may be given them, for anyone who does this will be of evil report. Where, however, wild beasts cause injury to men, or growing grain, or vineyards, or flocks, ecclesiastics can pursue them under such circumstances, and kill them if they encounter them. The Holy Church also ordained that when an ecclesiastic made a practice of hunting in any of the ways aforesaid, which he was forbidden to do, and, after his prelate had warned him not to do so, still persisted in it; if he were a priest who said mass, he must forbid him to conduct the service for the space of two months; and if he were a deacon or subdeacon, he should be deprived of his office, or his benefice, until his prelate granted him a dispensation.

LAW XLVIII.

Ecclesiastics Should Not Be Mediators or Judges Under Secular Laws.

It is not becoming for ecclesiastics to be involved in secular disputes, for this is no part of their calling, for the reason that it would be disgraceful for those who are especially devoted to the service of God to meddle with the laws of laymen.¹ But there are matters of this kind to which they can attend, and

¹ "*Clerici non ponentur in officiis.*"—Ed.

this would be the case where one of them is commander, or prior, or manager of the property of a religious order, or an ecclesiastic who has charge of the inheritance of orphans, or of idiots, or of spendthrifts, or of persons who recklessly squandered their money. There are also other things with regard to which ecclesiastics can concern themselves with secular laws, and interpret the same; as, for instance, in suits in which the king commands them to render judgment, and where persons place their disputes in their hands for them to decide them according to their wisdom, or settle them by agreement, binding themselves to abide by their decision, with or without penalty; or where prelates have the power of trying those under their jurisdiction who are their vassals, or their subjects, over whom they have full authority according to law, in temporal, as well as in spiritual matters. Ecclesiastics can also act as advocates or attorneys in secular lawsuits, as is explained in the Titles which treat of the things which they are authorized to do. Moreover, when a secular judge is unwilling to treat with justice those who have lawsuits with one another, and over whom he has jurisdiction, the bishop can then notify him to do so, and if he refuses he must communicate the fact to the king, in order to inform him of what is transpiring in his dominions: and not only should prelates set kings right in matters of this kind, but in everything else where they are of opinion will be for the common benefit of the king and the country, and tend to the averting of injury.

LAW XLIX.

What Punishment Ecclesiastics Should Undergo Who Do Things That Are Prohibited.

Prelates have authority, as the Holy Church commands, to use compulsion on ecclesiastics who are known to do things that are forbidden them, as was previously shown by the laws under this Title. This, however, must be understood in this way: if the ecclesiastic, when he meddles in trade which is something prohibited, wears a clerical habit, his prelate must warn him three times not to do so: and if he should not be willing to desist, from that time forward he shall not enjoy the privileges possessed by other ecclesiastics, but will be required to observe the practices and customs of the country like a layman; except that where anyone wounds him, the former should be excommunicated for that reason. If he does not wear the clerical habit, but bears arms, his prelate must admonish him three times not to do so: and if he should not be willing to desist, he shall lose for that reason the exemptions of the clergy, and if anyone should wound him, his assailant should not for that reason be excommunicated. This also would be the case if he wears a layman's habit, even although he does not go armed. Moreover, those who are legally married, and wear the tonsure, cannot avoid paying taxes to the king, or to the other lord of the land where they live, and they are also required to obey the other laws which laymen do; for it is right since they live like laymen, that they should observe their laws and customs.

LAW L.

On the Exemptions of the Clergy, and for What Reasons They Should Have More of Them Than Other Men.

Ecclesiastics enjoy many more exemptions than other men, in person as well as in property, and this privilege emperors, kings, and other lords of the land conferred upon them through honor and reverence for the Holy Church: and it is eminently just that they should have them, for the Gentiles, the Jews,

and other peoples, as well, of whatever belief they may be, honor their clergy, and grant many privileges not only to members of their own priesthood, but also to foreigners belonging to other nations: and history relates that Pharaoh, King of Egypt, reduced to slavery the Jews who came into his country, and caused all those under his authority to pay him taxes, but exempted their ecclesiastics, and even gave them of his own property that they might have food: and inasmuch as the Pagans, who have no lawful belief, nor full knowledge of God, honor these persons to such an extent, much more should Christians do so, who hold the true belief and are certain of salvation; and therefore they granted exemptions to their ecclesiastics and honored them greatly; first through their reverence for the Faith, and second, that they might the better serve God and perform their duties without hindrance, and that they might not exert themselves except for that purpose.¹

LAW LI.

Ecclesiastics Should Be Safe in Their Houses, and in the Persons of Their Dependents, and Should Not Be Compelled to Perform Vile Services, or Be Deprived of Their Property by Force.

Ecclesiastics should be secure in the places where they dwell, and wherever they go, for no one ought to do them harm by deed or word, so as to hinder them from preaching the Faith, and performing their duties as they should. And, as all men on earth ought to be safe by law, much more should ecclesiastics enjoy this security; first, on account of the orders which they have; second, because it is not proper for them to carry arms with which to defend themselves, and therefore they should not be deprived of their property by force, nor should they be arrested, except for debt or on account of some obligation which they had publicly entered into, or for some other lawful reason; and this only after they have themselves acknowledged their liability, or it has been proved before those qualified to render judgment in the matter. All ecclesiastics should be exempt from paying anything by way of personal tax. Nor should they, themselves, perform manual labor in castles, or on the walls of cities or villages; nor are they required to carry stone, sand, or water, or make lime, or carry it; and they should not be compelled to do any of these things, or take care of the aqueducts by which water is conveyed to cities or town, or clean them, or heat baths or ovens, or perform any other degrading services of this kind.² This same exemption which they enjoy, their dependents, who live with them in their houses, and serve them, enjoy also. For since ecclesiastics

¹ The general regulations of the *Partidas* relating to the mental qualifications, eligibility, and conduct in office of the members of the priesthood correspond, as a rule, with those prescribed by the Canon Law. Those physical defects for which a man is excluded from the ecclesiastical order are practically identical in both treatises, showing that one has largely laid the other under contribution, despite the long, and oft defiant, independence of the Gothic hierarchy. Slaves, murderers, and criminals in general, are prohibited from taking holy orders even after the repentance of the latter. The rights of masters in their slaves who have been ordained either purposely or ignorantly by the officiating prelate, are jealously protected in both. The manner of election, in the majority of instances, is the same.

Moderation in discourse, at all times, was especially enjoined by the Canon Law; "*Sit rector discretus in silentio, utilis in verbo, ne aut tacenda proferat, aut proferenda reticescat.*" (Corp. Jur. Can. I, XLIII, 1). The Canon Law is very indulgent to illegitimate children; "*Ex adulterinis nati coniunctionibus a sacerdotio non prohibentur.*" (Corp. Jur. Can. I, LVI, 8); while persons born out of wedlock are specifically mentioned by the *Partidas* as not being competent to hold office in the Church. On the other hand, the *Partidas* views with greater leniency the offences of a scurrilous and jesting priest, and merely reprimands him; while the Canon Law demanded his removal, "*Clericum scurrilem & verbis turpibus ioculatorem, ab officio retrahendum censemus.*" (Corp. Jur. Can. I, XLVI, 6.) "The provisions of the code of Alfonso X scarcely required more in the higher ecclesiastics than that they should know how to read and write; the Canon Law was, however, more exacting in conformity with its maxim: "*Ignorantia mater eunctorum errorum, maxime in sacerdotibus Dei vitanda est;*" which, it is hardly necessary to state, was not, in any respect, applicable to the laity, whose piety was considered to be in a direct ratio to their ignorance and blind subserviency to their religious instructors.—Ed.

² Exemption from secular taxation was provided by the Canon Law as well as by the *Partidas*; innumerable special privileges were conceded to the priesthood by the former, and the dignity of the clerical office protected by stringent regulations and ecclesiastical penalties, which exceeded in number and severity those of the Spanish Church.—Ed.

are required to be present at all the religious services established by the Holy Church, it is but just that their men who serve them and whose duty it is to take care of their property, should be also exempt from such labors, unless they should perform them with the consent of the ecclesiastics to whom they belong. Moreover, no one can lodge in the houses of the clergy without their consent.

LAW LII.

When Ecclesiastics Are Required to Guard the Walls of the Cities and Castles Where They Live, and When They Are Not.

When war exists in any country, for the reason that the inhabitants of the towns are obliged to guard their castles and walls, ecclesiastics are not required to defend them; although it is the duty of all those who as are sheltered there to do so, the vassals of the Church, as well as others. If, however, the Moors, or other enemies of the Faith, should besiege any town or castle, ecclesiastics should not refuse to mount guard and defend the walls in a case of this kind; and it is understood by this that there must be urgent necessity for it, and that this applies to such ecclesiastics as are most fit for the purpose: and the selection must be made by the bishop, or by some other prelate who is in that locality. For it is right that all should guard and defend the true Faith, and protect their own country and its towns from enemies, in order that the latter may not kill or capture them, or deprive them of their property. Moreover, bishops, and other prelates who hold lands or any property of the king by service to be rendered him, must march in the army of the king, or whomever he sends in his place, against the enemies of the Faith; and, if they are not able to go, they must send their knights, and supplies in proportion to the amount of land which they hold. But if the king is at war with Christians, he should exempt the prelates and other clergy from going in person, except in such cases as are customary, according to the laws of Spain. Nevertheless, their knights, and others subject to them, should not be excused from the service of the king, in whatever way it may best satisfy him.

LAW LIII.

What Control Ecclesiastics Have Over Lands Which They Justly Obtain.

Ecclesiastics have control over landed and other property which they obtain by purchase, donation, or in any other lawful manner, and their legitimate children, if they have any, can inherit it after their deaths, and if they have none, their next of kin can do so, as is stated in the Sixth Partida, in the Title concerning Inheritances. But when it happens that a priest dies without making a will and disposition of his property, and has no relatives to inherit it, the Church shall inherit it in the same way as if the said property had belonged to men who paid taxes to the king on account of it, and will be obliged to render the king the services, and pay him the taxes which those did to whom it formerly belonged, or to bestow it upon such men as will do so: and this is done that the king may not lose his taxes, and the Church retain its right in said landed property: and for this we have the example of Our Lord Jesus Christ, when he said to the Jews that they should give to Caesar what belonged to him, and to God what was his. There are, however, certain lands on which, as soon as the Church obtains title, the king has a right to collect taxes, according to the use and custom of Spain, although previously he did not have any such claim upon them.

LAW LIV.**What Things Ecclesiastics Are Required to do, and Which They Cannot Avoid on Account of Exemptions Which They Enjoy.**

The exemptions which the clergy enjoy by reason of their office, have been set forth fully in the preceding laws. There are some instances, however, in which the Holy Church declared that ecclesiastics could not avoid aiding laymen; as, for instance, in the case of new bridges which are to be built for the common good of all, wherever they are necessary, and also, and where those already built must be taken care of, so that they may be preserved, and not destroyed. In matters of this kind the clergy are required to assist laymen, and each of them to contribute to the expense, to the same extent as the other neighbors who are laymen do; and they must do this also with respect to the highways or other roads, which are for the benefit of the community. In order to accomplish this laymen should not use force, but merely tell them what to do, and, if they should refuse, they must communicate the fact to their prelates, that the latter may compel them to do it, and they are bound under all circumstances to carry out what has been commanded them, because these are good and charitable works.

LAW LV.**From What Other Things the Clergy Are Exempt from Contribution, and from What They Cannot Be Excused.**

Tithes, first fruits, and offerings belong exclusively to the Church, and the clergy are not bound to pay taxes on them to the king or to any other man. Moreover, they should not pay taxes on lands which kings and other men give to the Church, either when this is first done when they are consecrated, nor on those which are given for their tombs. The same rule applies to churches which are already built and have been abandoned, for they should not pay taxes on the lands which had been given them for their support. Moreover, the clergy should not pay taxes on any donations which emperors and kings have bestowed on churches, except where these lords have especially reserved something for themselves. But where a church buys lands, or men who paid taxes to the king give lands to a church, the clergy are required to pay all the taxes and contributions which those who formerly possessed them had to pay; and, in this way, anyone can give as much of his property to the Church as he wishes, unless the king should have forbidden him to do so by his patents or by his letters. If a church fails at any time to discharge the obligation it was under, on account of such lands, it should not, for that reason, lose its title to them, although the lords can use compulsion against the clergy who hold the lands, by seizing the latter until they fulfil their obligation.

LAW LVI.**What Privileges the Clergy Enjoy in Deciding Spiritual Controversies.**

The clergy are also privileged in other matters in addition to those we have mentioned in the preceding laws, and this is with reference to their judgments, which are divided into three different kinds, for they either relate to spiritual matters, or to temporal affairs, or to acts of sin. Wherefore, the Holy Church defines each of these, what they are, and before whom those who are summoned on account of any of them should be judged: for the questions are spiritual which concern tithes, first fruits, offerings, marriage, whether the birth of a man or woman is legitimate or not, the election of a prelate, and the right of presentation to a benefice; for, although a layman can hold the latter,

as has been stated previously in the Title treating of this subject, still, because it belongs to the affairs of the Church, it is considered of a spiritual character; and disputes which arise concerning the tombs and benefices of ecclesiastics, as well as the controversies which result from sentences of many kinds, as, for instance, those of excommunication, suspension, and interdict, as is set forth in the Title concerning Excommunication; and also contests between churches as to what bishopric or archdeaconate they should belong; or between bishoprics, as in what province they should be included. Moreover, disputes which arise with reference to the Articles of Faith and the Sacraments are of a spiritual nature. All the above named matters, and others similar to them, belong to the jurisdiction of the Holy Church, and her prelates must decide them.

LAW LVII.

In What Temporal Contests the Clergy Enjoy Exemption, so as to Be Tried by the Judges of the Holy Church, and in What They Are Not Exempt.

Those contests are called temporal which men have with one another concerning lands, money, animals, agreements, contracts, exchanges, or other things of this kind whether they are personal or real property. And when one ecclesiastic asserts a claim against another with regard to any of these matters, he should be judged by his prelates, and not by laymen; unless where the king, or some nobleman gives landed property to the Church, or to some ecclesiastic to hold of him; for where any person institutes a suit of this kind concerning such property, whether he be an ecclesiastic or a layman, he must answer before him who gave it to him, or of whom he holds it, and not before anyone else. Where, however, an ecclesiastic institutes a suit for any property against a layman, it should be brought before a secular judge; and if, before the said suit is decided, the layman against whom the claim is made desires to set up a counterclaim against the ecclesiastic who is plaintiff, the latter must answer there in that same proceeding, and cannot refuse to do so on account of the privileges which ecclesiastics enjoy by reason of the Church. Moreover, when an ecclesiastic inherits the property of a layman, and someone else has a claim against said layman, on account of said property, or on account of some injury he has committed; the ecclesiastic is bound to make reparation before the secular judge, before whom he from whom he inherited the property must have done so, if he were living. This also would be the case where an ecclesiastic sold any property, personal or real, to a layman; for, if any other person should set up a claim against it, he must answer before a secular judge, and make restitution and reparation in the matter, in the presence of whoever presented the claim against the layman.

LAW LVIII.

On the Judgments Which Belong to the Holy Church by Reason of Sin.

Every man accused of heresy, and he against whom proceedings are instituted on account of usury, simony, perjury, or adultery; as, for instance, where a wife accuses her husband, or he her, in order to separate from one another and not live together; or where persons who are married accuse each other on account of relationship or some other impediment which exists, because of which the marriage should be absolutely annulled: or on account of sacrilege, which is committed in many ways, as is shown in this Part and in the Title which treats of those who steal, or enter by force upon, the property of the Church; all such persons are subject to ecclesiastical law, and controversies of the kind above mentioned, which arise from these sins which men commit, should be judged and settled by the decision of the Holy Church.

LAW LIX.

For What Reasons Ecclesiastics Forfeit the Privileges Which They Enjoy, and May Be Subjected to Compulsion at the Hands of Secular Judges.

Kings, and other laymen who exercise judicial authority on account of their position, can, in some instances, exert compulsion upon members of the clergy; for the Holy Church deemed it proper that where an ecclesiastic, through covetousness or audacity, desired to usurp the power of the Pope, not having been elected as the law of the Holy Church commands, secular princes could use force against him, and deprive him of his office: and this it is their duty to do, as soon as those in whose hands the right of election legally resides acquaint them with the fact; and they also have this power when ecclesiastics do or say anything contrary to the Catholic Faith, for the purpose of destroying or embarrassing it; or parties cause disagreement or dissension among Christians, in order to separate them from the Catholic Faith. Laymen should prevent such parties from doing these things by arresting them, and doing all the harm possible to their persons and property. Moreover, where an ecclesiastic treats excommunication with contempt, and remains under it for the space of a year, the king, or the lord of the land where he resides, may employ compulsion against him, depriving him of everything which they can find in his possession, until he is willing to make amends to the Holy Church. And, not only are laymen authorized to use force upon ecclesiastics in the above stated cases, but also in all others where prelates ask their assistance, and show that they are unable to execute their sentences against them, as the Holy Church commands. Thus, in any one of these above named instances, ecclesiastics lose the privilege which they formerly enjoyed of not being subjected to force through the decisions of laymen.

LAW LX.

For What Causes Ecclesiastics Lose the Privileges Which They Possess, and Should Be Degraded and Given Over to the Secular Law.

If any ecclesiastic should forge a letter of the Pope or his seal, after he has been detected in such forgery he loses the privileges which the clergy enjoy, should be degraded as the Holy Church commands, be at once delivered over publicly to the secular law, and brought before the secular judge, who can then imprison him, and inflict upon him the penalty for forgery. His prelate however can plead for him, and ask mercy be shown him, if he desires to do so. This course should be taken with an ecclesiastic who insults his bishop, or refuses to obey him, or lies in wait for him, in any way, in order to kill him. This same rule also applies to the case of an ecclesiastic who has been guilty of heresy, and has abandoned it, swearing that he will never again return to it; for, if he does return to it, he should be degraded and delivered over to the secular judge at once to be tried by the law of laymen, as he deserves; and he should receive the same treatment who was accused of heresy, and purged himself of it before his prelate, if afterwards it should be ascertained that he returned to it. Thus, for any of these above-named causes mentioned in this law, an ecclesiastic should be delivered to the secular judge immediately after being deprived of office, in order that force may be employed against him, by sentencing him either to death, or to whatever penalty the law of laymen prescribes. Moreover, whenever an ecclesiastic has been detected in forging the letter or seal of the king, he must be deprived of his office and branded with a hot iron on his face, that he may be recognized among others on account of the forgery which he committed; and he should afterwards be banished from the dominions of the king whose seal or letter he forged.

LAW LXI.**For What Offences Ecclesiastics Should Not Be Delivered Over to the Secular Law, Although They May Be Degraded.**

They call ecclesiastics degraded whom prelates deprive of holy orders on account of serious offences which they commit; and whenever it happens that an ecclesiastic commits any offence not included among those mentioned in the preceding law and for which he should be degraded; as, for instance, where he was caught stealing, or committing homicide or perjury, or any other crime of this kind, and accused and convicted before his judge, his prelate must then degrade him; and, although he may be degraded for any of these crimes, he should not, for that reason, be delivered over to the secular law, for it is better for him to live as an ecclesiastic, and be judged by the clergy and protected by them; but if, after this, he should not be willing to submit to punishment, and should commit any offence on account of which he deserved corporal punishment, he must be abandoned to the laymen, in order that they may judge him according to their laws, and, from that time forward, he will remain subject to the secular law.

LAW LXII.**How the Clergy Ought to Be Honored and Respected.**

Laymen ought to greatly honor and respect the clergy, each according to the order and dignity which he holds; first, because they are mediators between God and them; second, because by honoring them, they honor the Holy Church whose servants they are, and they honor the Faith of our Lord Jesus Christ who is their head, and for which reason they are called Christians. This honor and respect should be manifested in three ways, in deed, in word, and in counsel. In word, they should not annoy them, or insult or slander them. In deed, they should not kill, wound, or dishonor them by arresting them, or by depriving them of their property. Nor is it otherwise with respect to counsel, which consists in giving others advice to do the above-named things, or to care to suggest to them to commit sin, or anything else which would be unbecoming to them. Wherefore, when anyone who acts contrary to this, in addition to the penalty which he deserves according to the ordinances of the Holy Church, the king should impose one upon him according to his will; taking into consideration the offence which he committed, the party who committed it, the person upon whom it was committed, and the time and place where this was done.

TITLE VII.

On Those Bound by Monastic Vows.

Some persons choose to live a life which is austere and secluded from other men, because they believe that in this way they serve God better without hindrance. And, since the riches of this world are an impediment to this, they think it better to renounce them all, and to conform to what our Lord Jesus Christ said in the Gospel, that to all those who abandon father, mother, wife, children, or other relatives, and all temporal goods for him, he will give in return an hundred fold and, besides, life which will endure forever. Such persons as these are called the regular clergy, because they all have certain rules by which they are compelled to live, according to the regulations which they received from the Holy Church at the origin of its religion, and, for this reason, they are included in the Order of the Clergy.

Since in the two preceding Titles we have treated of prelates and other ecclesiastics, it is proper to speak here of the regular clergy, and, in the first place, to show why they are called regular, or bound by rule. Also what they must promise when they receive the monastic order, in what way they should receive it, in whose hands they should make their profession, and for what time they should remain under probation and for what reason. Also, how old they must be in order to take a monastic order, for what reasons they can be removed, or withdraw from it, and for what reasons they cannot. Moreover, in what way they can pass from one order to another, how such as are married can assume a religious habit, and how they should live with one another in order to observe their rule.

LAW I.

Who Are Called the Regular Clergy and Those Bound by Monastic Vows.

All those who abandon the affairs of the world and adopt some religious rule in order to serve God, promising to observe the same, are called regular. Such persons as these are styled members of monastic orders, which means men bound by obligations, who have made themselves subject to obedience to a superior; as, for instance, monks, or canons of the cloister, who are called regular, or such as belong to any other order whatever. There are others also who live like those bound by monastic vows, but do not live under any rule. Such are those who assume the badge of an order, and dwell in their own houses, and are supported by their own property, but these persons, though they observe a rule in some respects, have not the same privileges as the others who live in their monasteries, as will be shown hereafter.

LAW II.

What Things Those Who Enter a Monastic Order Must Promise, and in What Way and to Whom They Must Make This Promise.

The promise which a party, whether man or woman, who enters a monastic order makes, is called his or her profession, and he who does this must bind himself to three things; first, not to own property; second, to observe chastity; third, to be obedient to the superior of the monastery in which he lives. These things are so essential to one who takes an order that even the Pope has no power to grant a dispensation to him if he does not keep them. He must make

his promise in writing, so that, if he should attempt to deny it, it may be proved by this means; for by taking the order and establishing another as superior over himself and, as it were, in the place of God, he loses control of his affairs so that he has no power over them, nor even over himself. This profession must be made in the hands of the superior of the order, whether he be abbot or prior. Where the monastery is one of nuns, the woman who desires to enter it must make her profession in the hands of the abbess or the prioress.

LAW III.

How Long He Who Enters Into a Monastic Order Should Remain Under Probation, and for What Reasons, and With What Garments.

He who desires to take a monastic order must remain under probation for a year, and this is so for two reasons; first, to ascertain whether he is able to endure the hardships and privations of that rule; second, in order that those who are in the monastery may learn the habits of the person who desires to enter it, and whether they will like him or not: and if, before a year has elapsed, he should desire to withdraw he can do so, unless where he has made profession in the manner mentioned in the preceding law; for, in that case, he cannot leave the order, nor can the abbot or prior of the monastery expel him from it, for the reason that it pleased him to make his profession, and they were willing to receive it from him. Wherefore, neither abbots nor superiors of monastic orders should receive the profession of anyone before a year of probation has passed, although it would be valid if this were previously done; and this is the case because some persons enter an order under the influence of passion, on account of certain things which have happened to them, or from a whim, thinking that they can endure the discipline, and afterwards, when they have been there for a time, they change their minds, and repent, so that some are compelled to leave, and others who remain against their will, live a wicked life there. Therefore they should not make their profession before the above mentioned time has elapsed.

He who enters an order in any monastery must assume the habit of that order, for in any other way he would not be able to experience its privations, as a great part of the severity of the rule is due to the garments which are worn.

LAW IV.

Of What Age Persons Should Be to Enter a Monastic Order for the First Time.

Those who enter a monastic order for the first time are called novices, and for the act of those who do so to be valid, a male must be fourteen years old, or more, and a female twelve, in order to receive the order; and where anyone under the above mentioned ages enters it, he or she can withdraw, if they desire, even though they have made their profession; and this is so because they have not attained the proper age to render their act valid. But if, after persons have arrived at the aforesaid ages, they make profession, or have remained there a year, they cannot afterwards depart.

When a father or mother places a son or daughter in the order, they cannot leave until they have attained the age of fifteen years; and then the superior of the monastery should ask them if they desire to remain there, or not; and if they do, from that time forth they cannot change their minds, or leave the order, and if they do not desire to remain, they can return to the world. Force should not be used to compel them to take the order, for it would not profit them, so far as the salvation of their souls is concerned, to serve God under compulsion.

LAW V.**Who Is Authorized to Remove from the Order Anyone Who Enters It Who Is Not of the Proper Age.**

Where a boy or girl under the proper age enters a monastic order, without the consent of his, or her father, the latter has authority to remove them from it, within a year after he is apprized of the fact. Where they have no father, he who has the guardianship of them can remove them within that time; and, if they have no guardian, their mother can remove them, if she had them under her control when they entered the order even though they should not be willing. If the child is of age, no one has authority to remove him thence, and where the monastery he entered is so distant that the father or guardian of the child can not reach it within the above mentioned period, he should have a longer time to enable him to remove it, dependent upon the distance of the locality.

LAW VI.**How Masters Can Remove Slaves from An Order, When They Assume a Religious Habit Without Their Command.**

Where a slave belonging to any person assumes a religious habit, his master has the right to demand him within three years after he learns of the fact, in order to return him to slavery; and, if he should not make a demand for him within that time, the slave should thenceforth remain in the order as free, and his master cannot afterwards claim him. If, however, those who received him in the order knew that he was a slave, or were not certain whether he was free or not, they should not give him the habit of the order for three years; because, if his lord should come and claim him during this time, they must surrender him with everything he brought with him, requiring his master to promise beforehand that he would not do him any injury on this account: but if, before three years have elapsed, they should give him the habit of the order, the slave may remain in it, but the monastery is bound to pay to the master whatever said slave was worth; and this is the case because they have done wrong by receiving him before the proper time, and if those who received him into the order were in doubt whether he was free, and, when they asked him, he falsely replied that he was, and produced false witnesses to prove it, and his master proves that he was his slave; they must strip him of his habit, for the reason that he obtained it by means of deceit, expel him from the order, and return him to slavery, and place him in the power of the master to whom he formerly belonged, on account of the deception of which he was guilty.

LAW VII.**For What Reasons Anyone Who Enters a Monastic Order May Leave It, and for What Reasons He May Not.**

Anyone who enters a monastic order can leave it before a year has elapsed, if he should not, before that time, make profession, as has been above stated. But where he had the determination when he entered it to live no longer in the world, he cannot afterwards return to the world. He can, however, enter another order which is less strict, if the first which he entered does not please him. But if his intention was not to abandon the world altogether, and he desired to enter the order to try whether he could fulfil its obligations and endure them, and, in case he could not, to resume his former condition if it did not please him; he can then return to the world and to his former condition before the

year has expired, but he should not live in as worldly a manner as formerly: and in order to remove the doubt as to whether he had a fixed determination to remain in it or not, he should say so in the beginning when he entered; and if he should not do this, he gives it to be understood that he came with the intention of trying the order, and, in case it did not please him, returning to the world; and he should not be compelled to remain in the order unless certain indications should appear from which it could be certainly inferred that he did this with the intention of not living any longer in the world: as, for instance, if, at the time he entered the order, he made his will, and bequeathed all his property to his heirs; or made donations, and bestowed his possessions upon the Church or upon the poor; or where, in the monastery he entered, a distinction exists between the habits of novices and those of others who have made profession, and he, knowing this, declined that of the novices and took that of the others; such a man as this cannot return to the world, even though he should not have been a full year under probation, or should not have made profession. Moreover, where a person enters a monastic order and wears its habit for a full year, this affords an important presumption against him that he had formed the determination to remain there, and, for this reason, he should be compelled to make profession, and observe the rule.

LAW VIII.

For What Reasons Those Who Are in One Order May Change to Another.

Where the rule of a monastic order is harsh and austere, so that the person who enters it is not able to endure its discipline, he can leave it, if he wishes, and change to another that are less strict; but he must do this before he makes profession, and not afterwards. If, having left the order which he took with the intention of not returning to the world, he should marry before he changed to another; such a marriage will not be valid, nor can he excuse himself from entering any order by reason of it. For, although the habit he first assumed is not a matter of such great importance that he can be compelled to remain in that order, still, because he resolved not to live any longer in the world, this determination which he came to has such power that it prevents him from afterwards being able to marry, or remain in the world.

LAW IX.

How, from a More Privileged Order, One Can Pass to Another Which Is More Strict.

The love of God induces certain members of monastic orders to endure greater labors and hardships than those in which they live, by giving them the determination to change to others whose discipline is stricter than their own, and, therefore, where God grants to some the grace to eagerly desire this, they certainly should carry it into effect. The party interested must, however, in the first place, ask the prelate in whose monastery he lives to give him permission to enter an order which is more strict. If he should not be willing to give him permission, he can enter another stricter order without it; for such as God directs in this manner are not bound to obey their prelates, when they hinder them from performing his service. Not only members of the regular clergy, but also those of the secular clergy, can do this, and they should not fail to do it, even though their prelates oppose them and hinder them. This provision, however, does not apply to archbishops, bishops, or other prelates of superior rank. For, if any of them desire to enter a monastic order, they cannot do so without very earnestly petitioning the Pope to grant this to them as a favor, and if they should do it without his permission the act will not be valid.

LAW X.**How Members of the Secular Clergy Should Act, When They Desire to Enter a Monastic Order.**

If an ecclesiastic of the secular church desires to change, and live in another order of a monastic character, he can certainly do so: but, in the first place, he must ask his bishop or some other prelate of inferior rank, if there is any in that locality, to grant him permission to do this, and if he does not grant him permission, he can do it of his own accord. Where, however, any person who belongs to a monastic order desires to change from one monastery to another, and the one to which he wishes to go is of stricter discipline than his own, he can do so, by first asking his prelate to give him permission; and if that monastery is the same in life and rule as his own, he can change to it, if the prelate is aware of his desire and gives him his consent. If he wishes to go to a monastery where the discipline is less strict than that of his own, he cannot do so except for two reasons; first, where anyone desires to live in an order and enters a monastery and is not content to live under that discipline, he can pass to another less strict before he makes profession, as above stated; second, where a person who belongs to a monastic order leaves his monastery and goes wandering round the world, and afterwards, acknowledging his fault, desires to return to his order, and, in the country where he happens to be, he can not find a monastery of the same order or rule under which he was accustomed to live, or any other where the rule is more strict; then, indeed, he can live in another whose discipline is not so severe. But if there is no monastic order whatever in that country, he can reside with the secular clergy, living a good life and observing his rule the best that he can. For this same reason, whenever members of a monastic order cannot be obtained to live in regular monasteries, members of the secular clergy can be placed there, to dwell in them and make secular churches of them.

LAW XI.**In What Way Laymen Who Are Married Can Assume a Monastic Habit.**

Married laymen can assume a monastic habit if they desire to do so, but the law of the Holy Church makes a distinction in this respect, namely; whether he who desires to take the order does so with the consent of his wife, or not. If she does not give him permission, she can always ask him to return and live with her, and the bishop of that diocese must compel him to do so unless she has committed adultery, for which reason her husband can drive her away, after having proved it against her. There is another distinction, as for instance, when a wife permits her husband to enter an order, for she either does this through fear, or through compulsion, or willingly. If she does so through compulsion, she can ask him to return, as above stated, and if she willingly consented, he cannot be removed from the order, for the Holy Church declared that when a wife was young, and promised to be chaste, when she gave her husband permission to assume a monastic habit, the bishop of that diocese could force her to enter a convent; but, if she had not promised this, he could not compel her to do so, but the bishop should exert the power of his office to compel her husband to live with her again. Where the woman is so old that no suspicion can arise against her with regard to her preserving her chastity, she can remain in the world, and should not be compelled to enter a monastic order. Moreover, the Holy Church ordained that if the husband left his order and wandered around the world, his wife could make a demand upon him to live with her, although she had granted him permission to enter it, but she could not do this if her husband remained in the order.

LAW XII.**Concerning Those Who Enter An Order Without Permission of Their Wives.**

Where a wife makes a demand for her husband, and he is removed from an order, for any of the reasons stated in the preceding law, and, after they have lived together again, she should die, his prelate must admonish him to return to the order, and if he refuses to do so, he commits a sin. The Church should not, however, force him to return, and this is the case because the promise which he made was not fulfilled as it should have been, nor should he bind himself absolutely to observe chastity, on account of the impediment of the marriage which then existed. Such a man should not afterwards marry, and if he does so he commits a sin, because he acts contrary to what he promised and should perform Penance for it, even though the marriage is valid. Where anyone enters an order without the permission of his wife, and if, while he is in the monastery, she should desire to take monastic vows, she can do so, even although he opposes it; but if he leaves the monastery, and they live again together in the world, she cannot afterwards take monastic vows unless her husband consents to her doing so.

LAW XIII.**Concerning Those Who Betroth Themselves As Husband and Wife, and One of the Parties Afterwards Desires to Enter An Order Before They Are Married.**

Where certain persons mutually consent to become husband and wife by words relating to the present time, which means something that is agreed upon, and is soon to be accomplished; as, for instance, if the man should say to the woman, "I promise to be your husband," and she should say to him, "I also promise to be your wife;" or other words like these; although a marriage contract of this kind, is sound and should be valid; nevertheless, if either of them desires to enter into a monastic order before they are married, he or she can do so even though the other opposes it, and whichever of the two remains in the world can marry. And if any person of those above mentioned who says that he desires to enter an order, delays to carry this into effect, the bishop should set a time in which he should enter; and if, during that time, he does not do so, he must compel him to do one of two things; either to enter the order, or consummate the marriage, and, if he should be unwilling to do either of these things, he should excommunicate him; and this is done because he appears to act with evil intent since he refuses to consummate the marriage. Moreover, the Holy Church ordained that if a married man should become a Moor, or a heretic, or embrace some other religion, and the Church should annul the marriage for this reason, and, after this, he should return to the true Faith, and his wife should prefer to enter an order rather than to live with him, she can do so, even though he opposes it; but if she should not enter an order he can claim her as his wife, and the prelate should compel her to live with her husband.

LAW XIV.**In What Manner Monks Should Live and What Things They Have to Observe in Their Orders.**

Monks, and other members of the regular clergy should live a good and holy life, for on this account they renounce the world and its pleasures. For this reason the Holy Church deemed it advisable to point out some of those things which monks have to observe, especially in order to live an austere

life, and they are the following: namely, they should not wear linen shirts, or possess property of their own, and if any one of them does have property he should at once abandon it, and if he does not do so after he has been warned according to his rule, and it should be subsequently ascertained that he still possessed it, it must be taken from him and appropriated for the benefit of the monastery, and he should be expelled and never received again, unless he does Penance, as his rule requires. If he should keep this property concealed during his life, and this should be discovered at his death, those who find it out should bury him outside of the monastery on a dunghill, as a sign that he is lost; for St. Gregory did this in his time to a monk who retained his property, and for this reason monks should not accept anything from any man in the world; but if any person desires to make them a present they must communicate the fact to their abbot or prior, or to him who has charge of their provisions, that he may accept it, if he desires to do so: and, moreover, they should be careful not to speak in the church, or in the refectory, or in the dormitory, or in the cloister, except in stated places and at stated hours, according to the custom of the monastery in which they live.

LAW XV.

What Monks Should Not Eat Meat, Except in Certain Places.

Monks should not eat meat in the refectory under any circumstances; nor should they act in conformity with a custom which prevails in certain monasteries, where, on holidays, a few of their number are left in the cloisters, and the main body of monks, along with the abbot, leave the monastery to eat meat: and this should not be so, for on holy days they should observe their rules the more strictly, and they should not eat meat outside the refectory, except in the infirmary. When the abbot, however, sees that some of them have need of it, he can at times call some, and at other times others, to his room, and give them meat to eat. Moreover, those who are weak or ill, or who have to be bled or take medicine, should not be placed apart in other rooms, but all should go to the infirmary, and there they should be given what they require, not only meat but other things which are necessary for them, as well. But if a monk is weak, or should have lived viciously in the world, and it is found that the food of the order which is usually given to the others, is not sufficient for him, and either the abbot or the prior should desire to do him the favor of giving him something better to eat, they must first have it brought before themselves in the refectory where they are eating, and not before the said monk; and they should then send it to him as an allowance, in order that he may the better endure the discipline: and they should do this in order that no scandal may arise among the others on this account.

LAW XVI.

Who Those Should Be Who Are Appointed Superiors in Monastic Orders, and What They Ought to Do.

The word prior means first in rank, for in any locality where there is an abbot, he is next in rank after him and the superior of all the others, and where there is none, he occupies the place of abbot: and, therefore, it is proper that he perform good works, be of good life, of good reputation, and of good speech, so that by the example of his manners, and by his just punishments, he can instruct his friars well, and remove them from evil; having love for his order, and wisdom to direct those who err while in it, and afford comfort and assist-

ance to those who observe its rules and fulfil its obligations. The abbot who has authority over the entire monastery, and who should be obeyed and honored in all proper and just things, as far as possible, should remain in the convent with his friars; displaying great zeal in maintaining his monastery, and taking great pains to improve it, in order that he may give a good account to God of the abbey which was given him. If however, he should act in a manner destructive to the order, and pay no attention to his administration, he can be deposed, and punished besides, as his rule commands; for he must not only suffer for the evil which he did, but also for the injury which he caused others on account of the bad example he gave them, and because he did not correct them as he should have done. Moreover, the abbot as well as the prior, should appoint to offices in the monastery monks who are intelligent and loyal, in order that they may supervise the affairs of the order which are placed under their control; and when they desire to give an office or a charge to anyone of their order, they should not do this forever, but for such a time as they deem advisable, and they should see that he performs his duties in the place to which they appoint him.

LAW XVII.

Members of the Regular Clergy Should Attend the General Chapter, and What They Have to Do There.

The word chapter means, in Latin, an union of men who live together regularly, and for this reason those places where both members of the monastic and secular order assemble in order to discuss and agree upon certain matters are also called chapters. The Holy Church ordained that a General Chapter should exist in every kingdom and in every province, and at certain times, as the condition of each order demands, the abbots, and the priors of monasteries in which there are no abbots, should assemble there; and this the Holy Church commands in order that all the rights which the bishop of those countries enjoy in certain monasteries may remain in their integrity, and that ordinations may not be conferred, or agreements entered into, by which the force of said rights may be impaired: and at a chapter of this kind, all the superiors of every order must be present where no lawful impediment exists which prevents them from doing so. They must select one of the monasteries, which they know to be most proper for the purpose, in the central portion of that country, and no one should bring with him more than six animals and eight men. And for the reason that in certain localities where this kind of a chapter has been recently instituted, those who assemble there may not have sufficient experience to conduct the business, the Holy Church directed that two abbots of the Cistercian Order, who were nearest at hand, should be summoned, to give them advice, and show them how they should act; and although the Order of Cluny is more ancient, for the reason that members of the Cistercian Order were more accustomed to hold this chapter, and therefore had more experience, the Holy Church deemed it advisable that the said two abbots should go there, and should select two others of the chapter, whom they considered best qualified for that purpose, to assist them in the duties which they had to perform, and these four were required to be superiors; this however should be done in such a way that none of them could acquire power, because of his selection, so as to be always regarded from that time forward as a superior, but it should be positively understood that they are at liberty to select anyone whom they desire. This chapter should remain in session continuously for three days, or longer, if it should be considered necessary, according to the custom of the Order of Cistercians, so that they may hold their discussions deliberately and with great zeal, in order to maintain and amend the rule of their order. What-

ever is settled there with the consent of these four should be considered established, and no one can interfere with it by opposition or appeal, or by alleging any excuse. On account of these duties which they have to perform, such persons are called "definers," because they put an end to, and accomplish such matters as arise; and it is their duty while there to select the monastery in which the chapter will assemble another year. All those who attend must eat together, and each one must pay his share of the expenses according to his means and the company he brings with him; and where all cannot be accommodated in a few houses, they can be distributed in others, so that there may be many together.

LAW XVIII.

How Official Visitors Should Be Chosen by the Chapters, and in What Way They Should Visit the Monasteries After Having Been Elected.

Public visitors should be chosen by the chapters which we have mentioned in the preceding law, for the purpose of visiting the monasteries. They are so named for this reason; because, during their visitations, it is their duty to correct and improve such matters as they find in bad condition. In order the better to do this, while they are all gathered together in the chapter, some men who are good, honorable, and prudent should be selected from the abbots and priors present, to visit, instead of the Pope, each of the abbeys of monks or nuns existing in that kingdom or province, ascertain what condition they are in, and what life their inmates lead, and punish and correct whatever they see should be punished or corrected, according to the rule of their order. When they find that an abbot or prior, among those they visit, has done anything for which they should deprive him of his abbey or priorate, they must communicate the fact to the prelate of highest rank in whose jurisdiction the monastery is, that he may remove him thence; and if he refuses to do so, the visitors should make the fact known to the Pope. The Holy Church deemed it proper that the regular canons should hold their chapters in this same way, and that whatever matters they determined there should be strictly observed, as their rule commands, and if any doubt should arise which cannot be removed by these visitors, it must be communicated to the Pope. Moreover, the Holy Church deemed it proper that bishops should endeavor to regulate the monasteries situated in their bishoprics in such a way that when the visitors went there; they should find more things to praise than to correct: and she commanded them, to be careful not to oppress them by taxation, or otherwise; for in this way the Holy Church desired that the rights of those of superior rank should be kept in bounds, so that their inferiors would not suffer oppression or any other injustice from them. She also commanded all bishops and the superiors of chapters, that if any powerful men, or any other persons whosoever, should injure them in their persons, or in the property of the monasteries, and refuse to make reparation; they should compel them by the sentence of the Holy Church to make amends for the insults and injuries which they had committed, and this the Holy Church deemed proper, that religious orders might the more freely serve God.

LAW XIX.

Visitors Have Power to Punish and Prohibit the Faults Which They Find Existing in Monasteries.

Those selected for this purpose by the General Chapter should visit the monasteries, as stated in the preceding law: and, when they have this to do, they should inquire and learn, in the first place, the condition of the monasteries and how they observe their rule, and it is their duty to correct and

punish, in temporal as well as spiritual matters, whatever they see is necessary; and cause the abbots to chastise such monks as they find are guilty, and impose penance upon them as the rule of St. Benedict and the ordinances of the Pope command, and not according to the evil practices prevailing in some places, and which it is the custom to observe as the rule.

When the visitors find any monks who are disobedient and rebellious, and desire to defend the errors which they commit, the Pope grants them his authority to impose punishment upon them according to their guilt, as their rule commands; and in doing this they should not respect the person of anyone, or pardon those who are rebellious; either on account of their own obstinancy, or the influence of their friends exerted to prevent their expulsion from the monasteries, where there is need of discipline; for the wickedness of one man will cause many of those with whom he lives to err, and if perchance they should not be able to do so without scandal, or some great injury which they think might result to the parties from doing so, they should communicate the facts to the Pope, that he may give them advice in regard to it.

LAW XX.

How Visitors Should Act Against Abbots and Priors Whom They Find to Blame.

There are abbots and priors in certain monasteries who obey no one but the Pope, and when such as these are unwilling to inflict punishment upon themselves or on their monks, for faults in which they have been detected, as their rule directs or their visitors command; the chapter must summon them, bring them before all the members, and inflict upon them such punishment that others may take warning from it, and no one be bold enough to do such a thing. But if the visitors should find that some abbot among those who are subject to the bishops is negligent, and does not pay attention to regulating the affairs of his monastery; the fact must be communicated at once to the bishop of that jurisdiction, in order that he may send them another of that order, who is a good and prudent man, and can assist them in governing the monastery until the General Chapter assembles: and this the bishop must do. If the prelate of the above named locality should be so wicked as to waste or destroy the property of the monastery, or has committed other offences on account of which he should lose his abbey; after the visitors have informed the bishop of this, they must remove him from it without any other judgment, and appoint some good man in his stead, who may govern the monastery until another abbot is created. If the bishop should not be willing or take the trouble to do this, the visitors, or others who are appointed superiors by the General Chapter must at once communicate the refusal of the bishop to the Pope. Moreover, when those abbots who are not subject to anyone but the Pope have committed any offense for which they ought to be deposed from their abbeys, the bishop or other superiors of the General Chapters should send some good and learned men to the Pope to inform him of the offenses which the said abbots have committed, and of any other matters which they may wish to communicate to him.

All abbots must pay the expenses of these messengers in proportion to the wealth of their monasteries, and while they are sending to the Pope to inform him of the offences and errors which the said abbots have committed, they must forbid the latter to interfere in the affairs of the monasteries, and should appoint others who are good and loyal, for the purpose of managing those affairs.

LAW XXI.**What Visitors, Who Are Newly Appointed After Their Predecessors, Should Do.**

New visitors should be appointed every time a General Chapter assembles, and when these travel through the country visiting monasteries, they should inquire and learn what the other visitors who preceded them have accomplished; and where they find they have done too much, or have failed to institute reforms, they must communicate this to the next General Chapter which assembles, in order that it may, in the presence of all, impose punishment upon them in proportion to the offenses which they have committed. This also it is their duty to do in the case of abbots who have been superiors of the chapter, before, or after others have been appointed in their stead and the visitors have learned that they have done certain things they should not have done, and whatever faults they find they have committed they should inform the Chapter of them, in order that it may inflict such punishment upon them as they deserve. In addition to this, it has been established by the Holy Church that abbots and monks should not receive members of the secular clergy in their monasteries, in order to give them food, and allow them to have any voice there, or occupy any place of honor, either in the cloister, the chapter, the dormitory, or the refectory; or permit them, while there, to engage in disputes with the monks, asserting that they have the right to remain there with them: for it is not reasonable that men of two habits, or of two professions, should be equal in one monastery, but they should remain content with the hospitality they receive in the monasteries, and give their services loyally, living a good and honest life, and should not ask, or take anything else by force, whether it be of a temporal or a spiritual nature: and when the visitors find that any of the said members of the secular clergy are men of evil life, or malefactors, and belong to monasteries subject to bishops, they must acquaint the latter with the fact, that they may deprive them of the benefices which they possess.

Where they belong to other monasteries which have no superior but the Pope, the visitors and the other superiors belonging to the General Chapter, have authority to remove them: and it is understood that all the above-mentioned matters must be observed not only in monasteries where there are abbots, but also in others where there are priors occupying the places of superiors instead of abbots; and, in monasteries of nuns as well, so far as such matters may concern abbesses or nuns, and be for the interests of their order.

There are many other things established and practiced by the regular clergy in accordance with their rule and their good customs, which they are required to observe, although these are not written in the law.

LAW XXII.**Neither Abbots, Priors, Nor Superiors Should Receive Anyone in An Order for the Sake of Reward, Or Under An Agreement that They May Retain Something Separate As Their Own.**

Neither abbots, priors, abbesses, nor any other superiors of monasteries, whether of men or women, should accept anything of value from those who desire to enter their orders. Wherefore, any person who gives anything for the sake of being received into a religious order, where an inmate of the monastery, which he desires to enter, asks it of him, and this is known before he is ordained, he should not be given holy orders, and he must be expelled from the place where he was received, what he gave be returned to him, and he be sent to another monastery of more rigid discipline, along with the party

who accepted the gift, although he may be one of the principal persons of that monastery, or of any other. Moreover, they should not consent for him to retain anything to be held separately as his own, unless he has an office in the monastery on account of which he was entitled to retain it, and then this can only be done with the consent of his abbot. And if it should be discovered that he held it in any other manner, he must be forbidden to communicate with the others at the altar: and where it is found that he held such property at the time of his death and did not disclose it at confession, or repent, as he should have done, mass must not be said for him, nor can he be buried among the other friars, but he must be buried outside the monastery, as is stated above under this Title, in the law which begins with the words: "Monks and other members of the clergy."

LAW XXIII.

Neither Priorships Nor Commissions Should Be Bestowed for Reward, Nor Should Priors Who Are Elected by Their Chapters Be Removed from Their Positions Without Just Cause.

Neither priorships, farms, nor anything else should be given in charge of a member of a religious order, in consideration of any reward which he may give, or promise to give; and both those who give and those who receive anything in this way should be expelled from the offices they hold in the Holy Church. Moreover, priors who have been legally elected by their chapters in conventual churches, and confirmed by their superiors, cannot, without manifest and lawful reason, be removed from their positions after they have once taken them. This would be the case, where they neglect the affairs of the order which it is their duty to attend to; or if they should not preserve their chastity, or should do something else contrary to their rule on account of which they could be justly removed; or where any of them are good or valuable men, and it should be desirable to change them from one position to another which is higher and more honorable.

LAW XXIV.

For What Reasons a Member of the Regular Clergy Should Not Be Left to Reside Alone in Any Place, or Appointed to a Parish Church.

No member of the regular clergy should be left to live alone either in a town or a castle, or should be appointed to a parish church, but he must remain in a convent. If he is sent somewhere else, he must be accompanied by other friars, and this the Holy Church commanded in order to comfort him and give him strength to be able to contend with the devil, with the world, and with the flesh, which are the enemies of the soul. For as Solomon said: "He who lives alone, lives in trouble, because, if he falls into sin there is no one to assist him to rise, that he may escape from it."

What is stated in this law with reference to monks is also understood to apply to others of the regular clergy who are obliged to observe and practice it; and any abbot, or prelate of higher rank, who does not diligently attend to these matters, should be deprived of his abbey.

LAW XXV.

For What Reasons Monks May Be Authorized to Govern Parish Churches.

Monks can govern parish churches, and even have the care of souls in them, if the churches are such that two or more monks can live in each one of them. But where a church is so poor that more than one cannot live in it,

he should not be left alone there, as is stated in the preceding law: and bishops have the power to appoint monks to these positions with the consent of their superiors. This is the case where the churches to which they assign them do not entirely belong, both temporally and spiritually, to the monasteries where they are situated, because they are not wholly theirs. But where the churches, along with all their revenues, absolutely belong to the monasteries, their superiors have the right to appoint members of the regular clergy to them without permission of the bishops: and those monks who have been appointed in this way to parish churches, can preach in them, and baptize, and do all the other things that secular priests are authorized to do in their churches.

LAW XXVI.

What Things a Priest of the Regular Clergy, Who Serves a Parish Church Is Required to Do.

Priests who belong to the regular clergy and have parish churches, as is stated in the preceding law, are exempt from three things which they were required to do while living in their monasteries, and these are the following, namely: they are not obliged to fast, or keep silence, or observe vigils in the way prescribed by their rule, for, while living in secular churches, they cannot keep or practice these things perfectly on account of the service which they have to hold there: but they are not exempt from other things, for they must wear their habit, observe chastity, and not hold property; and, in addition to these requirements, they are obliged to be obedient to their abbots, or the superiors of their orders, when the churches are absolutely theirs with respect to temporal and spiritual matters, and to those superiors they must account for everything.

Where the monastery has only a temporal interest in the church, then the account of spiritual matters must be rendered to the bishop; and where the monastery has no rights whatever in the church, the monk is not required to obey his abbot or his superior in anything, but he is subject to the bishop in whose bishopric he is; and he is not required to repeat the service as his rule directs, but according to the custom of that bishopric, for every one is bound to observe the good customs of the locality in which he lives, in order that neither scandal nor discord may arise between him and the others who are there: but if he is subject to the bishop of a church, then his abbot, or any other superior would have no authority over him, nor would he be required to obey him; nevertheless, he must wear his habit, and preserve his chastity, and not own property, and is exempt from the three things mentioned in this law.

LAW XXVII.

What Things Cistercian Friars Should Not Have.

A Cistercian monastery is one from which the entire order of white monks, which St. Benedict founded, derives its name. This order was instituted in extreme poverty, and for this reason the Church of Rome showed its members many favors, by bestowing privileges and exemptions upon them; but because some of them afterwards acquired towns, castles, and churches, tithes and offerings, and received fealty and homage from vassals who held lands of them: and assumed the positions of judges to hear complaints; and made themselves collectors of taxes and other revenues; the Church deemed it advisable that they should renounce these things, and that if they did not, the privileges and exemptions which had been bestowed upon them by reason

of the poverty and austere life in which their order began, should be invalid; for it is but just and reasonable that a man should be judged and live according to the law which he himself has chosen. The Holy Church also deemed it proper that where any monasteries of any order whatsoever change to that of the Cistercians, and possess towns, castles and the other things above mentioned which are forbidden to this order, they must sell and exchange them for ordinary landed property, and live in the same poverty in which the others of their order do.

LAW XXVIII.

No Member of the Regular Clergy Can Study Medicine, or Law.

The Holy Church did not approve that any member of the regular clergy should study either medicine or law, and this was forbidden them, because there were some who, through the temptation of the devil, had a desire to leave their monasteries and wander through the world, in order to live more according to their pleasure, concealing their motives under these two pretences. Some declared that they were going to study medicine, by means of which they could keep the friars in health, and cure them when they were ill in their monasteries; and others that they were going to study law that they might be able to protect the affairs of their own establishments; wherefore, for the reason that they desired to do evil under an appearance of good, the Holy Church decreed that their prelates should prohibit them from learning any of these subjects, and if they should ask permission to go and do so, that, under no circumstances, they should grant it to them: and if any member, after he had made his profession, should leave his monastery with the intention of studying these things, he who did so should be excommunicated for this act alone, and whoever was his superior must inform the bishop within whose bishopric the monastery was situated, in order that he might cause him to be denounced for his conduct. All bishops, in whose bishoprics such persons went to study, or resided, should pursue this course, and this they are required to do.

LAW XXIX.

What Punishment a Monk Deserves Who, Being Excommunicated, Abandons His Order, and Afterwards Wishes to Return to It.

Where a member of the regular clergy who, after having been excommunicated in the manner mentioned in the preceding law, acknowledges his sin, repents, and desires to return to the monastery to make amends for it, his prelate must receive him, and impose upon him the following Penance namely: that he be the last in rank of all the friars in the choir, in the chapter, in the refectory, and in all other places, and shall never be selected superior of any order, unless by command of the Pope; for no one but him can grant such a person a dispensation. The Holy Church inflicted such severe punishment upon men of this kind for the reason that some of them, when they had an opportunity of going out into the world for the purpose of learning one of the aforesaid sciences, became irregular in their habits, lived evil lives, and never returned to their monasteries. No one should think that this penalty was imposed without reason, for as fish cannot live without water, neither can members of the regular clergy live good lives outside of the cloister, because they lose eternal life. If monks were to reflect well upon the meaning of their name, they would understand that they should despise temporal things, for the word monk signifies, in Greek, a keeper of one's self, and in Latin, one who is alone and sad: for he should be solitary by going aside to

pray to God, and he should be sad by being silent, in order that he may not err in speech, exerting himself to accomplish what he has to do, as his rule commands; and this is the case because he is dead to the world, and only living in the sight of God.

LAW XXX.

In What Respects the Law of the Regular Canons Agrees with That of the Monks, and in What It Does Not.

The law of the regular canons agrees with that of the monks in many respects, for both are required to obey their superiors, and cannot appeal when they punish them, unless they impose upon them a greater penalty than they deserve for the offence which they have committed. They also agree in that they must preserve chastity, and neither of them can own property; or leave their cloisters to go anywhere without permission of their prelates. They must all assemble in one house to eat, as well as to sleep; and must not separate from one another. Both are required to hold their chapters, as has been stated concerning monks. But although they agree in these things, there are others in which they do not agree, for canons of the regular clergy can live alone, where there is good reason for their doing so, which monks cannot do. Besides there is a difference between their habits and their food, for the discipline of the order of the canons is more lax, and easier to endure than that of the monks.

LAW XXXI.

In What Manner Bishops Should Proceed Against Members of the Regular Clergy Who Contumaciously Leave Their Orders.

The regular clergy of the monasteries hold farms and have charge of property under the direction of their superiors; and, at times, some of them, while in possession of the same, at the instigation of the devil, collect the revenues derived from them; desert their monasteries; and disobediently wander through the world, visiting the courts of kings, and the houses of other men of high rank; and because the Holy Church was aware that scandal might arise from the wickedness of such persons who were guilty of many offences, she ordained that the bishops in whose bishoprics such monks wandered in this way, should warn them to return to their monasteries; and that they should seize whatever property they found in their possession, for the benefit of the establishments whence they took it, as their abbots and superiors there might approve. If they refused to return after this warning, the bishop should send word to their superiors to employ force against them that they might be compelled to return to their cloisters: and if the said superiors were not willing to use compulsion against them in this manner, the bishops should forbid them to conduct the service or to use their benefices, until they return to their order.

LAW XXXII.

In What Way Abbots and Priors Should Punish Their Monks,

When abbots and priors find that their monks have committed any offences, even though they may be of little importance, they can punish them by giving them discipline, as their rules command, with straps or rods, whether they have taken holy orders, or not. But they should be careful, whenever they are compelled to strike any of them who have done things to deserve it, that they do not do so through dislike, but for the sake of punishment: and

they should either do this themselves, or command some members of their order to do it. For if they act influenced by a grudge, and not for the purpose of inflicting punishment as they ought to do, both those who give the order and those who execute it, will be liable to the sentence of excommunication.

TITLE VIII.

On the Vows and Promises Which Men Make to God and to the Saints.

Where any man voluntarily makes a promise to another concerning something just and good, he is bound to keep it; and if this is the case with respect to the promises which men make to one another, how much more should it be with respect to those which they make to God. And since in the preceding Title it is fully set forth how the promises made by members of the regular clergy, when they receive the order, should be kept; it is proper to speak in this one of the vows and promises which men make to God while living in the world, for although this does not relate to the affairs of the holy orders, it is something which corresponds to them. We shall explain, as the Saints did, what a vow means and how many kinds of them there are; who can make them and who cannot; what vows can be redeemed and changed, and what cannot; and for what reasons vows can be redeemed or absolved, and who has power to do this.

LAW I.

What a Vow Is, and How Many Kinds of Them There Are.

A vow means a promise which a man makes to God, and, under such circumstances, it is truly named and should be kept, when it is made for any good purpose which may redound to the service of God. He who makes a vow should deliberate upon it beforehand, and not make it hastily; and he who makes a vow for a bad purpose is not bound to keep it, for as St. Isidro said, wicked promises should not be kept. A vow made for a good purpose is divided into two kinds, one compulsory, the other voluntary. Those which are compulsory every Christian is required to keep, as well as the promises everyone makes for himself, or that his godfathers make for him when he receives baptism, that is, that he renounces the devil and all his works, and promises to keep the Faith of Our Lord Jesus Christ and the commands of the Catholic religion; and, for this reason, when a man sins after baptism he doubles his guilt, and this is the case because he commits a mortal sin, and also breaks the vow he promised to keep. Penance, however, should not be imposed upon him for two mortal sins, but only for one, because one was aggravated in him by the aid of the other.

A voluntary promise is one a man makes of his own accord concerning something proper for the service of God, and which he is not required to do if he does not so desire, and he can be saved without it, although he has not performed it; as, for instance, to live under a monastic rule, or preserve his chastity, or fast, or go on a pilgrimage, or anything else of this kind; and although any man can be saved even though he did not perform a vow of this kind, nevertheless he is required to keep it after he has once made it. For, as David said in the Psalter; "Make your promises to God, and perform what you have promised;" by which it is given to understand that although the first of these clauses resembles advice, the second is compulsory. But good men should do many things, although they may not be mentioned in the ordinances of the Holy Church, for the services which men willingly perform for God should be more acceptable to them, than those that they are required to do through compulsion.

LAW II.**A Voluntary Vow Is Made In Two Ways.**

A promise which a man makes to God in secrecy is called, in Latin, a simple vow, and a solemn vow is one which is made publicly in the presence of many people, or in the hands of any prelate, or over the cross or the altar, or in writing; and this is observed only with respect to the vow of chastity; however, so far as God is concerned, a man is as much bound to keep the vow which he makes in secrecy, as the one he makes openly, and whoever breaks either falls into mortal sin: but, for the reason that men are scandalized whenever they see that anyone has broken the vow which he made publicly, the Holy Church ordained that a promise of this kind should have greater force than a simple one. For, where any one has voluntarily made a simple vow to enter a religious order, and afterwards marries, the marriage will be valid; but if he should do this solemnly and openly, he could not marry, and if he did, the marriage would be void. This is the case because he sins against God, against the decrees of the Holy Church, and against his neighbors, by scandalizing them on account of his fault.

LAW III.**What Persons Can Make a Vow, and What Persons Cannot.**

David, who was both king and prophet, said that a man is bound to keep the vows which he makes. Where, however, any person desires to change a vow for a greater one, he can do so, because it seems to be the will of God that man should always increase in goodness, and therefore this should be forbidden to no one. Nevertheless, there are persons who cannot do this without the permission of others; as, for instance, a bishop, who cannot make a vow to enter an order without the command of the Pope. Moreover, anyone, not of age, cannot make such a promise without the consent of his father, his mother or his guardian. Neither can a slave do so without the consent of his lord, nor a husband without the consent of his wife, nor a wife without the permission of her husband. Nor can a monk make a vow to live a more austere life than the other friars of his monastery, unless by permission of his abbot, and this is the case because otherwise scandal might result to the others therefrom.

LAW IV.**What Vows Can Be Redeemed or Changed, and What Cannot.**

As has been stated above, there are two kinds of vows, some called voluntary and others compulsory, and all those which are voluntary can be changed and redeemed for some lawful reason, except where some one makes a vow to observe chastity; for this is of such a kind that, although it be voluntary, it must be kept forever, because it can not be redeemed or changed for anything else as good. That voluntary vows can be changed for those that are better, is proved by the ancient law by which they were accustomed to exchange one thing for another; for they used to give other things instead of first fruits which they were required to offer, and since in fulfilment of the commandments of the law which God ordered them to keep, they did this, much more should Christians observe them in the promises they make; for man is much more bound to keep the commandments of God, than the promises he makes voluntarily. But a compulsory vow cannot be redeemed, or changed into anything else; as, for instance, the promises which a man

makes for himself in baptism, or which his godfathers make for him when he is baptized; as neither the Pope, nor anyone else, can alter or exchange a promise like this, because it would be contrary to the doctrines of the Faith.

LAW V.

For What Reasons Vows Can Be Exchanged and Absolved, and Who Has Power to Do This.

A prelate ought to consider what kind of a man he is who made a vow, when a question arises concerning its alteration, or exchange for another; that is, whether he is old, weak, ill, poor, or rich, and moreover what kind of a promise he made. If he is weak or old, and has made a vow to go to Jerusalem, he must carefully consider whether his weakness is such that it will probably last for some time, and he must then prolong the period until he thinks he will be strong enough to perform what he has promised. But if his illness or weakness, or the impediment under which he labors, should be of such a character that it might last for his entire life, then he should be commanded to redeem his vow, by calculating what expenses he would have to pay while going, remaining, and coming, in order to fulfil what he promised; and the amount of all these expenses, when calculated, he must be ordered to send by some member of the regular clergy whom he shall select, to be expended for things necessary for the service of the Holy land whither he had promised to go.

If, peradventure, he who made the vow to go to Jerusalem should not labor under any of the impediments aforesaid, he cannot redeem or change his promise, unless he is a man much needed for the peace or profit of the land, so that it is understood that it would be better, and rather for the service of God, for him to remain there, than to carry out what he has promised; or where he is so poor that he could not go without begging alms, and there was no need of his going, because he could not be of service to those who are in that country. For these reasons and for others like them, either the Pope, or anyone whom he especially commands, can absolve or redeem the above mentioned vow. But where a man is of noble rank and high intelligence, or had the power to take people with him, even though he should be infirm, or such a one as would not be of any benefit in arms, he cannot alter or exchange his vow; because, while going there, what he cannot do with his hands, he can accomplish by his advice and with the assistance of those who accompany him. As for the other vows which men make to go to Santiago, or other sanctuaries, the bishop has full authority to redeem and to absolve them, where those who made them are hindered for some of the above-stated reasons.

LAW VI.

What Vows Can Be Redeemed, Dependent Upon the Position of the Persons Who Made Them.

Some men promise to fast, or not to eat meat on certain days, or to rid themselves of other worldly vices, and, after they have promised, desire to be free from their vows. The prelate who has power to release them should, in this case, consider the obligation of the vow; who the man is that made it, or what property he is possessed of; and whether he is a kind or some other powerful man; or a person of wealth who has promised to fast on Fridays on bread and water, or totally abstain from food; and afterwards, if he should say that he cannot fulfil his vow, and requests permission

to change, or be freed from that promise, the prelate has no authority to permit him to do such a thing, because some other poor man can perform the vow, but he must direct him to do so, according to who the man is, and the amount of property he possesses.

LAW VII.

He Who Changes His Vow for Another Which Is Greater, Does Not Break the Former.

One who breaks his vow is he who does not perform what he promises, either by redeeming it or by exchanging it for something else, as above stated; but he who changes what he has promised for something better, cannot justly be spoken of in this way. For this reason all vows which men voluntarily make can be changed into monastic vows; and this is the case because such a promise is undoubtedly better than the other, as it will last during the whole of the life of him who made it, and others can be performed in less time. The Holy Church also declares that a voluntary vow can be exchanged or broken in two ways; first, when it is done by order of a prelate, as stated in the preceding law; second, when he who made the vow especially attached certain conditions to it, and this would be the case if anyone should say: "I promise that if I go to Spain, I will go to Santiago; or if to Italy, to the churches of St. Peter and St. Paul at Rome; or if to France, to the Cathedral of St. Denis", or, where anyone has a sick child, and makes a vow that, if it recovers from its illness, he will take it to the church of Santa Maria de Rocamador, or to some other sanctuary. Wherefore, anyone who makes a vow in any of these ways or in any other similar to them, and has the means to perform it, is bound to do what he promised; and if he does not happen to have the means, it should not be said of him, for that reason, that he had broken his vow. There are, however, conditions which are understood with every vow, although he who makes it does not especially mention them; as, for instance, if anyone should say: "I promise to go to Santiago"; in this case it is understood that he will if he lives, or is able to do so, and God should be willing, and these conditions and others similar to them, are called general conditions.

LAW VIII.

What Vows Women Cannot Keep Against the Wishes of Their Husbands.

As is above stated, there are certain persons who cannot make vows without the permission of others, and one of these is a wife, who cannot make a vow without the command of her husband. A distinction exists here, however, for it may happen that she makes such a vow before, or after, marriage. If she made it before, she cannot perform it if her husband is not willing, unless she made the vow of chastity in the solemn manner mentioned in the seventh law preceding this. If she made it after marriage, it must be that she did so with the consent of her husband, or without it, and, if she did it by his direction, she is always bound to keep it as far as she is able; but if her husband forbade her to make the vow she should abandon it: and even where her husband grants her his permission, and afterwards opposes her doing it, she is bound to obey her husband's command, for in that case she does not commit a sin, although he is guilty of a mortal sin by his opposition to what he had granted his wife permission to do.

A husband has an advantage over his wife in this respect, and need not abandon his vow on her account; he cannot, however, make a vow to pre-

serve his chastity, or enter a religious order, without her consent, neither can she do so, without his permission. Nevertheless, a husband cannot make a vow to fast, or not eat meat, or submit to abstinence of any kind, or do anything else that may tend to the injury of his wife, by which he may become ill or infirm in any way, so that he cannot have children by her.

LAW IX.

What Vow a Husband May Make Without the Consent of His Wife.

A husband cannot promise to go on a pilgrimage, without the permission of his wife, nor a wife without the permission of her husband; except to go to Jerusalem, and this a husband can promise to do, without the consent of his wife, because it is a more important pilgrimage than all the others, although she cannot promise to make it without the order of her husband. The prelate, however, must admonish the wife to be content, and if she should not be so, and wishes to go with her husband, he must take her with him. Moreover, if anyone promised to go to Jerusalem and does not do so during his life, and makes his will before he dies, requesting or directing any of his sons to perform that pilgrimage in his stead, where he recommended this to his son, the latter is bound to carry it out just as if he himself had made the vow; and where the father did not wish to recommend this, for the reason that he desired to redeem his vow by setting apart a certain portion of his property for that purpose, his heirs are bound to make the payment for him.

TITLE IX.

On Excommunications, Suspensions, and Interdicts.

Adam was the first man whom our Lord God created, as is stated in the Title which treats of the Holy Trinity, and on this both Jews and Moors are agreed. Hence he is, and will be called the Father of all, because he was the beginning of the race of men. But on account of Adam's wickedness, and the evil he did, and his want of fear of God, and his disobedience to His commands, he fell into sin by which he deserved to lose the favor of God, and to be alienated from Him, and be expelled from Paradise.

This was the first excommunication, as far as man is concerned, for another had already been made when our Lord drove out the angels from heaven because of their pride, and the treason which they committed thinking to become equal to him, and therefore they were turned into devils on account of their wickedness. But the pity God entertained toward man was so great that he did not wish him to be entirely lost, because he had made him in his own image, and had created him more noble than other creatures, and he showed him the way by which he might be pardoned, and enjoy his love; and this is by means of the Sacraments of the Holy Church, concerning which we have spoken in the fourth Title of this book; for they cure men of the infirmity of sin into which they fell through the guilt of Adam, and of that in which they fell since, through their own guilt, just as good medicine cures men of serious diseases. But besides this monition, there is another means which is compulsory, and although, in the first place, it is a source of affliction to men, through it they are afterwards brought to salvation, if they do not despise it: and this is the excommunication which is imposed as a penalty on disobedient persons, and on such as are unwilling to submit to the direction of the Holy Church who are called in Latin, rebellious. For, undoubtedly, it is very necessary that some mode of compulsion should be adopted with regard to such persons, to restrain them from wickedness, since one of the greatest faults that a man can commit is to scorn the commands of Our Lord, and go astray from him.

Since in the preceding Titles we have spoken of prelates, and other ecclesiastics who have authority to administer the Sacraments of the Holy Church, by means of which all Christians may be saved, it is proper to speak in this one of the penalty of excommunication. In the first place, we shall state what excommunication is; why it is so called; how many different kinds there are; and for what reasons men are liable to excommunication solely on account of their deeds, and, also, who has the power of excommunication, and over whom he has it, and for what things, and in what way, it should be used. We shall also state what penalty those persons should undergo who excommunicate others unjustly; and who has the power to absolve from excommunication, and in what manner; under what circumstances it is not valid, and what penalty should be imposed upon those who do not wish to be released from it. Moreover, in what way those who associate with excommunicated persons should be punished, and how those who give aid to the enemies of the Catholic Faith, against Christians, are excommunicated.

The provisions of the Canon Law concerning excommunications apply almost altogether to personal violence offered to the clergy, or to acts of sacrilege. Unlike other cases, a personal letter from the Pope does not release the offender, the absolution must be explicitly granted. "*Si aliquando fortè contigerit quod eis, qui auctoritate Apostolica sunt excommunicationi subiecti, nostras literas cum salutationis alloquio destinentur, non propter hoc excommunicationis credatur sententia relaxata.*" (Cor. Jur. Can. II, Dec. Greg.—XXXIX-V-41.)

A general resemblance, indicating a common source, also pervades the laws of the two treatises in the matter of interdicts. "*Interdictum generale privilegiati observare tenentur, non obstante privilegio.*

Non est deneganda poenitentia cruce signatis & peregrinis.

In quovis interdicto excipiuntur Baptismus puerorum & poenitentiae morientium & viaticorum. (Corp. Jur. Can. II Loc. Com. in Ius. Can. Tit. Interdictum.)—Ed.

LAW I.**What Excommunication Is, Why It Is So Called, and How Many Different Kinds There Are.**

Excommunication is a sentence which excludes and separates the man against whom it is pronounced, sometimes from the Sacraments of the Holy Church, and sometimes from the society of faithful Christians. Excommunication means the separation from communion that disjoins and excludes Christians from the spiritual benefits which are conferred in the Holy Church. There are two kinds of excommunication, one the greater, which forbids a man from entering the church, or taking part in the Sacraments, or in the other benefits which are conferred in it, or associating with faithful Christians: the other, the less, which excludes man only from the Sacraments, so that he cannot participate in them, or use them.

LAW II.**In How Many Ways a Man Incurs the Greater Excommunication Merely by His Act.**

The law of the Holy Church mentions sixteen things by means of which men incur the greater excommunication, after they have committed any one of them. The first is, where a person falls into any heresy of those mentioned in the Title on heretics, or where he invents a new heresy, or where the Church of Rome declares him a heretic, or where his bishop, or the chapter does so, if he left his church vacant; doing this by the advice of any prelate, his neighbor, at a time when there was need of him. The second is, where anyone knowingly receives heretics on his lands or in his houses, or protects them. The third, is, if anyone should say that the Church of Rome is not the head of the Faith, and should not be willing to obey her. The fourth is, where anyone wounds, or lays violent hands on, or strikes, as he should not do, any priest or monk, or any other man or woman belonging to a holy order. The fifth is, where anyone who possesses power in that locality sees others desiring to wound a priest or a member of a holy order, and does not defend him, having the power, and being bound to do so by reason of his office. The sixth is when anyone burns, destroys or sacks churches. The seventh is, where anyone styles himself Pope, not having been elected by at least two-thirds of the cardinals; and by this it is understood that he is unwilling to abandon his claim. The eighth is where anyone forges a letter of the Pope, or knowingly makes use of it, another having forged it. The ninth is, where anyone gives arms or ships to the Moors, or assists them in any other way whatever, against Christians. The tenth is, where any scholar or teacher, dwells in a lodging house, and someone else comes and speaks with the owner of the house, and in order to cause trouble to him who lives there, and has them rented, promises him a higher price for those lodgings. No teacher or scholar should do this without permission of him who has rented them; and by this it is understood that this takes place before the time had expired for which he had them rented, and whoever does this is excommunicated; for this is a special excommunication which the Pope ordered to be observed in the University of Bologna. The eleventh is, where any monk, regular canon, priest qualified to say mass, or any other person having an ecclesiastical dignity or office, goes to school to study medicine or law, without permission of the Pope. The twelfth is, when the mayors, consuls, or aldermen of certain towns or villages collect taxes from the clergy contrary to law or order

them to do things which are not proper for them to do; or usurp the jurisdiction of prelates, or the rights which they have in their dependents; for, where these things are not corrected within a month after the parties have been warned, they are liable to this excommunication, along with those who advise them and assist them in these matters. The thirteenth is, when anyone causes regulations, ordinances, or customs contrary to the privileges of the churches to be observed. The fourteenth is, where powerful persons, and the governors of cities and towns have promulgated such ordinances, for they, as well as those who have advised their adoption, or have written them out, are also excommunicated. The fifteenth is, where persons who render judgment based upon such ordinances incur excommunication. The sixteenth is, where persons advisedly record a judgment based upon such ordinances, for they are likewise excommunicated.

LAW III.

How Many Things There Are, and of What Kinds, on Account of Which Those Who Lay Violent Hands on Ecclesiastics Are Not Excommunicated.

Any person who lays violent hands on a priest, or on a man or woman belonging to a monastic order, in order to either wound, kill, or arrest him or her, renders himself liable to two penalties; first, that of excommunication; second, that he must go to Rome to be absolved. And although it has been said above that every man who lays violent hands on a priest or a member of a monastic order is excommunicated, through that very act; nevertheless, there are fourteen reasons why he who does this should not be excommunicated, and there are also thirteen reasons why he should not be compelled to go to Rome. Those why he should not be excommunicated, are the following. The first is, where an ecclesiastic neglects the tonsure and goes about as a layman; for if anyone should wound him, not knowing he was an ecclesiastic, he will not be excommunicated. The second is, where anyone abandons the clerical habit, and carries the arms of a layman, employing himself in doing improper things with them; for if a person of this kind does not desist from such conduct after his prelate has warned him, and any person should wound him subsequently, he is not excommunicated, although he knew he was an ecclesiastic. The third is, where an ecclesiastic is the steward or butler of a layman, and his prelate warns him not to continue to be so, and he refuses to give up his position; and if it should be found that he was guilty of deception with regard to any property under his control, and his lord should arrest him, he is not excommunicated on that account, although others may say the contrary. The fourth is, where some one wounds an ecclesiastic, not in anger, but during the performance of some work. The fifth reason is, if a master should strike one of his scholars, by way of punishment, or instruction. The sixth reason is, where an ecclesiastic desires to strike some one, and the other party strikes him to protect himself. The seventh reason is, if any person should find an ecclesiastic with his wife, his daughter, his mother, or his sister, and strikes him, he is not excommunicated on that account. The eighth reason is, where a precentor, a chorister, or a vicar strikes one of the ecclesiastics of the choir, in the discharge of his duty: for he should not be excommunicated on account of such an injury. We declare that this rule shall also apply where a bishop, an abbot, a prior, or anyone acting under their authority, does this for any just reason; and also where an ecclesiastic is detected in a fault, and any of those above mentioned orders some other ecclesiastic to

punish him; or where he has committed some crime and someone says that he should be judged by the king, and he should arrest him. The ninth reason is, where the superiors of the church, or those who are oldest, see some of the choir boys, who are not subdeacons, interfering with the service, and strike them lightly, in order to punish them, and to prevent them from doing so again. The tenth is, where a lord, who has not received holy orders, does this by way of punishment. The eleventh is, where a father strikes his son, or a servant, or any member of his family. The twelfth is, where a person strikes his relative, who belongs to one of the minor orders, by way of punishment. The thirteenth is, where anyone strikes or kills an ecclesiastic who has been degraded, or given over to the secular law. The fourteenth is, where an ecclesiastic becomes a soldier, or a layman, or marries a widow, or two virgins, or another woman who is not a virgin.

LAW IV.

For What Reasons Anyone Who Strikes a Priest, or a Man or Woman Belonging to a Monastic Order, Is Not Compelled to Go to Rome.

Rome is the designated place where anyone who lays violent hands on a priest, a monk, or a woman belonging to a monastic order, goes to be absolved, as is stated in the preceding law. This is the case because the body of St. Peter suffered martyrdom there, and the Pope derives from thence his apostolical authority, and because he is accustomed to dwell there more than elsewhere. However, if the Pope should be somewhere else, he must absolve him who incurred such excommunication there, because he is the one to do so; and this is understood to refer not only to the city of Rome but to every place where the Pope happens to be in person. However, there are thirteen reasons why those who become liable to such excommunication are not compelled to go to the Papal court. The first is, where a person is so ill that he is in fear of death, and repents, and the priest absolves him; but if, when the priest absolved him, he made him swear that when he recovered he would go to Rome, he must do so in order to keep the oath which he made, but not because he has need of absolution: and if, afterwards, he should not be willing to do this, he can be excommunicated on account of the oath which he made, and because he despised the commands of the Holy Church, but not on account of the offence which he committed, and of which he was absolved. The second is, where he has mortal enemies, and dares not make the journey for fear they will kill him. The third is, where he was doorkeeper of the king, or of any other lord, and wounded him, in preventing him from entering, although this was not done wrongfully. The fourth is, where he is ill and cannot go. The fifth is, where he is very poor. The sixth is, where he is very old, so that he could not endure the hardships of the journey. The seventh is, where any member of the monastic order has wounded one of his companions in such a way that he did not lose a limb, or much blood, by reason of it; for persons such as these, have no reason to go there as their superiors can absolve them: and this is so in order that they may not impair the service which they are bound to render to God. The eighth is, where the party is a woman. The ninth is, where the person who committed the injury is under the control of another, as, for instance, a minor who is under the control of his father or his guardian. The tenth is, where the party is a powerful man who has led a very vicious life, and, in consequence, will not venture to withstand the privations of the journey. (Their prelates, however, cannot absolve persons of this kind unless they first communicate with the Pope in order that he may direct what Pen-

ance to impose upon them.) The eleventh is, where the wound is so trifling that no disgrace can result from it, and no blood has been shed. The twelfth reason is, where a slave knowingly commits an act of this kind to obtain a pretext to absent himself, and not be compelled to perform some service for his master, and his master, through no fault of his own, suffers great loss through the absence of his slave. The thirteenth is, where one monk wounds another, or one nun another nun: for these can be absolved by their superiors if they are intelligent enough to do it, and are not forced to consult with the bishop in whose bishopric the monastery is situated. No female member of a monastic order, however, even though she may be an abbess, can grant absolution, for our Lord Jesus Christ did not bestow the power of absolution on women, but on men. Where one monk happens to wound another who does not belong to his own monastery, the prelates of both monasteries should meet and absolve them, unless the wound was very severe. But if anyone should wound a bishop, an abbot, a prior, or any other member of the secular clergy, he must go to the court of Rome and be absolved, in order that scandal may not result from it.

LAW V.

How Many Kinds of the Lesser Excommunication There Are, and What Distinction Exists Between Them.

The second law of this Title states that there are two kinds of excommunication; one the greater, the other the less. And, as in former laws it has been stated, concerning the greater excommunication, that a man is prohibited by it from entering a church, or participating in the Sacraments, or in the other benefits which are conferred there, and that he cannot associate with faithful Christians, as has been above mentioned; it is proper that hereafter we say something about the lesser excommunication, which is divided into two kinds. The first only deprives men of the Sacraments of the Holy Church. The second excludes them from the company of faithful Christians, and does not deprive them of the Sacraments. They can incur that which deprives men of the Sacraments of the Holy Church for two reasons: either by acting contrary to some law which the Holy Church imposes as a penalty upon such as treat her with contempt, as, for instance, to converse with persons under the greater excommunication, or associate with them in other matters in one of the ways mentioned in the laws of this Title; or, because their prelate imposed a certain penalty upon them, as if he should say: "Whoever does such a thing as this, or advises it to be done, we demand that he be excommunicated, and do not enter the church." The excommunication which deprives a man of the Sacraments of the Holy Church is understood in the following way, namely; that he should not be given the body of Our Lord Jesus Christ, or the benediction of marriage, or extreme Unction unless he performs Penance, if he can do so, or unless he manifests signs of repentance for his sins. That which excludes man from the society of true Christians is, when a bishop forbids anyone, whether he be an ecclesiastic or layman, to receive the salutation of peace in the church, or a priest to enter the chapter, or to appear in the place where judgment is rendered, for a stated period. Such an excommunication as this, however, does not deprive a man of the Sacraments of the Holy Church.

LAW VI.**What Things Priests Under the Lesser Excommunication Can, and What They Cannot Do.**

Where an ecclesiastic incurs the lesser excommunication for some cause which does not exclude a man from the Sacraments of the Holy Church, as has been stated, he must not repeat the service with the other clergy in the church, say mass, or administer the Sacraments, and, if he should do so, he commits a mortal sin for that reason; nevertheless, he is not guilty of any irregularity, for such a person can repeat the service while apart from the others, uttering it as one who prays, and he is indeed bound to repeat it on account of the order and the benefice which he possesses. Anyone who is under this excommunication can participate with his companions in holding an election, but they cannot elect him, knowing he is excommunicated. And when we say that he can take part in an election, this is understood to apply where he incurred the sentence of excommunication by acting contrary to some law which imposes a penalty upon those who treat it with contempt, as is stated in the law preceding this. But where a prelate, or anyone who has power to do so, excommunicates him, then he can neither take part in an election, or be elected; and this is the case because he who despises the command of him who makes the law, or that of him who has to judge by it, commits a more serious offence than one who errs only with regard to the law itself. However, a person excommunicated in this way may demand his rights in court, and be an attorney, an advocate, and a witness, which he cannot do where he has incurred the greater excommunication.

LAW VII.**What Prelates Can Excommunicate, and What Cannot.**

Bishops, and other minor prelates have the power of excommunication, as well as all others who are lawfully elected to, and confirmed in certain offices, as, for instance, abbots, or priors. But none of these, except bishops, can excommunicate with solemnity. Prelates who are elected by their chapters, as archdeacons, archpriests, choristers, schoolmasters, and treasurers cannot excommunicate, unless it has been their custom and practice for forty years—including the period of office of him who desires to use it, as well as those of the others who preceded him. However, it is understood by this, that they have made use of this custom constantly, without contradiction by others.

The Holy Church established three rules with regard to excommunication, the first is, that no minor prelate can excommunicate or absolve his superior; the second one is, that anyone who can excommunicate can absolve; the third is, that anyone who can absolve can excommunicate. However, each one of these above-named rules has its exceptions, for although it is said in the first that an inferior has not the power to excommunicate his superior, nevertheless he can do so under certain circumstances. This takes place when the superior places himself under the control of the inferior, giving him this authority in some instrument, for in this case he can excommunicate and absolve him, by reason of his act; for according to the Holy Church it is understood that where anyone puts himself under the control of another, the latter has power to try him as an ordinary judge. The second rule has two exceptions; for if a bishop, or anyone else who has power to preside, should denounce a person as excommunicated on account of some church which he had burnt, or should excommunicate him because he has burned crops or houses; no one has power afterwards to absolve him whom he has denounced, or published

as such, except the Pope, or some one he commands to do so. The other exception is where the Pope orders any one by his letter to hear some specified complaint, for in a case of this kind he can excommunicate any of those over whom he has been given power, and he can absolve them for the space of a year; and if a person of this kind is rebellious, and unwilling to obey his commands after a year has elapsed, he cannot absolve him. The third rule has one exception, which is this, when they accuse a bishop before his archbishop for doing something for which he should be deprived of his bishopric, and the archbishop causes all the bishops of his province to be summoned to hear the complaint along with him, and, after it has been heard, it is found that the said bishop was not guilty of what they accused him, they can acquit him of the charge. If, however, he should be found guilty, they cannot impose a penalty upon him as the result of the judgment, but they must communicate the matter to the Pope, that he may decide it.

LAW VIII.

Prelates Can Excommunicate Persons in Their Jurisdiction, But No Others, Except in Certain Cases.

A prelate can inflict the sentence of excommunication, where he is influenced by any just motive, on any man within his territory, which is called, in Latin, *jurisdictio*; but where he imposes such a sentence upon any one else it will not be valid, for no one should be judged or subjected to restraint except by one who has the power to try him. And that this should be thus observed is shown by what Our Lord Jesus Christ said in the Gospel: "Thou shalt not pass the boundaries which were established by thy fathers in ancient times."

There are, however, certain instances in which a prelate can impose this sentence upon persons who do not belong to his jurisdiction. For he has the power to sentence anyone who does not belong to his territory, on account of some sin which he committed in the land under his jurisdiction. He can also excommunicate under other circumstances, as in the case of loans, purchases, sales, pledges, agreements, contracts, or any other act of any kind performed in his bishopric; or on account of any of these things which were entered into elsewhere, but were to be carried out there; but it should be understood that the party must be found within the territory where the prelate has jurisdiction. The latter can also do this in another instance; for where anyone comes before him and claims a house, a vineyard, or any other real estate situated in his territory, as is above stated, he has power to excommunicate him, if it should be necessary, although his residence may be outside of his jurisdiction, and this rule also applies to personal property.

LAW IX.

In What Cases a Bishop, or Any Other Prelate, Cannot Excommunicate the Persons Within His Jurisdiction.

Prelates at times encounter obstacles on account of some of which they are unable to excommunicate persons within their jurisdiction. These are of two kinds, one of which is that a prelate cannot impose sentence of excommunication upon anyone belonging to his bishopric while the party is outside of it, because as he cannot sit in judgment outside of his jurisdiction, neither can he excommunicate; except where someone commits such a sin as deserves this punishment, and the facts are so evident that it is not necessary to prove them; for, in the case of a person of this kind, if his bishop did not take the trouble to punish him, the archbishop, to whose province the bishopric be-

longed, should warn the bishop to do so, and cause the guilty party to make amends for his sin, and if the bishop should still not take the trouble to punish him, the archbishop should admonish him to free himself from his sin. If he should still be unwilling to do this, he himself can excommunicate him, although he may not belong to that bishopric. But the Pope can excommunicate anyone who renders himself liable to it, in any bishopric, although he may not be in its jurisdiction at the time. The other way in which prelates are hindered is, in that they cannot excommunicate any person to whom the Pope has given immunity, by which he granted them exemption from excommunication, interdict, and suspension; except where those who enjoy such immunity are not willing to assist the prelates in enforcing regulations established against heretics; or where any privileged person is not willing to observe an interdict, which a prelate has imposed upon the entire country. Thus, for any of these reasons, or for others like them, their prelates can excommunicate such persons, and their privilege will not avail them. But where the Pope grants such an exemption to any convent of monks, it will be valid, so far as they are concerned, and no prelate has power to excommunicate them, or their monastery, on account of any sin or fault which they commit in the monastery; or on account of any contract of sale or exchange, or of any other agreements like these which they may enter into in any other way, and they enjoy this exemption by reason of the locality. But where one of them leaves the monastery, and accepts a priorship, or any other distinguished position, and he has committed such a sin as to deserve this penalty, the prelate in whose bishopric he committed said offence can excommunicate him, and he cannot set up that exemption in his defense; unless the monastery, with all its priorships, all its property, and all its estates, was exempt, or the monk who had committed the offence outside the monastery has returned to it.

LAW X.

For What Things Prelates Can Excommunicate Those Within Their Jurisdiction.

Contumacy is a word derived from Latin, which means in Castilian, disobedience, or obstinancy; and it is one cause for which the prelates of the Holy Church excommunicate men, for, although the reasons why they do so are of many kinds, this is the root from which all others spring. Men are disobedient when the judges, or those who occupy their positions summon them to come and do justice to those who complain of them, and they refuse to appear; or hinder those who attempt to summon them, so that they cannot do so; or conceal themselves, or leave the country, so that they cannot be found. Those also are disobedient who obey the summons and are unwilling to answer, or, if they begin to answer, go away, without permission, before the proper time: or where a judge renders a decision against them they refuse to acquiesce in it; or where they do not pay their tithes, or offer their first fruits according as the Holy Church commands; or where some of them commit perjury, and are unwilling to make amends for their sin. Moreover, when any persons knowingly steal or rob, or commit other crimes like these which are mortal sins; or where they were convicted in court of committing them, and refuse to make reparation for them, they can be excommunicated. If, however, the sins are not evident, or have not been proved in court, sentence of excommunication ought not to be inflicted on those who have committed them; although it may be generally stated that whoever is guilty of such violence or of any such offences, and does not make amends for them within a certain time, should be excommunicated for that reason. And for whichever

of the above named causes a person is excommunicated, he should undergo the greater excommunication, as is set forth in the second law of this Title.

LAW XI.

For What Causes Excommunication Can Be Inflicted Without Warning, and How They Can Excommunicate Those Who Take Property by Force.

He whom it is desired to excommunicate or suspend, should be warned. There are instances, however, in which this rule ought not to be observed; as, for instance, when anyone is summoned to come to council, or do justice to those who complain of him, and he does not come, or send any excuse, for where anyone is summoned in this way it is as valid as if he had been warned; and this is understood where he is summoned three times, or once for all, which is called in Latin *peremptorily*, which means a final summons. Moreover, he who openly steals the property of another can be excommunicated without warning, if the prelate orders him to return it and he refuses to do so; or if he sets a time in which he must give it up and he should be unwilling to surrender it; or where an ecclesiastic commits so heinous a sin that he would have to be degraded, if he did not afterwards make amends for it. And not only can prelates excommunicate, without warning, those who steal others' property and refuse to return it, but they can also excommunicate anyone who steals property belonging to them; and this they can do because they cannot defend themselves with any other arms but spiritual sentences. Where a man commits a wrong against a prelate with regard to his property, and is not willing to make reparation after he has warned him three times, he can excommunicate or suspend him; for if every man is justly bound to defend or protect his neighbor, much more should he protect himself.

LAW XII.

In What Way Prelates Should Act, When They Desire to Suspend or Excommunicate Anyone.

Prelates, or those who occupy their places, should warn persons whom they have to excommunicate, in order to observe the form that the Holy Church established in accordance with which they should do this. For he whose duty it is to do this must first warn the party whom he has to excommunicate, three times, in the presence of good men by whom he can prove it, if necessary; saying that he should make reparation, and desist from doing that concerning which he is admonished, and, if he should not be willing to make reparation, he can then excommunicate him in the following manner, namely; by sentencing him in writing, showing that he warned him as he should have done, and stating for what reason he excommunicates him: and if he upon whom he imposes said sentence, asks him for a copy of the document by which he excommunicated him it should be given him within a month at the latest: and if he of whom the copy is demanded refuses to give it, the former should draw up a paper, signed by witnesses, or sealed with a well-known seal which must be valid, in order that he may prove that he made the demand of him, and this seal is called in Latin *authentic*, which means the seal of a man entitled to have it in his possession, by reason of the position which he occupies: and this form the Holy Church deemed proper should be observed in the sentence of excommunication. And it decreed that this should also be observed in other sentences, as when there was any country, town, or church to be placed under interdict, or any priest to be suspended from his benefice and office.

LAW XIII.**Who Can Pronounce the Excommunication Called Solemn, and in What Way It Should Be Done.**

To excommunicate with solemnity is an extreme measure which belongs to bishops only, and not to the other minor prelates. It is done in the following way, namely: the bishop who is about to pronounce this sentence, should have with him twelve priests qualified to say mass, each of whom should bear a lighted taper in his hand; the bells should be rung; and then the bishop should say that he excommunicates a certain man or woman, designating him or her by name, informing all who are present why he does so, and saying that he casts them out of the bosom of the Holy Church, and excludes them from all the benefits which are conferred therein. When he has done this he should take a taper, throw it on the ground and quench it with his feet, or with water, as is the custom in some churches. This the other priests who hold lighted tapers in their hands should also do, and then the bishop should say: "May the soul of him who is excommunicated perish as these tapers do, if he does not make reparation to the Holy Church for that on account of which he has been expelled from it." And, by way of showing contempt for the party excommunicated, no one must take up those tapers in order to use them, but must leave them there as they were cast away.

The bishop must, afterwards, let it be known by his letters through all the churches of his bishopric, who it is whom he has thus excommunicated, and why he has done so; and notify all persons to beware of speaking to, or of associating with him. This kind of excommunication the Holy Church calls Anathema, which means the sword of the bishop with which he should put to death those who commit great sins, and do not desire to reform.

LAW XIV.**What Difference There Is Between Interdict and Suspension.**

Interdict and suspension are two different varieties of the lesser excommunication, which the Church sometimes imposes for the punishment of rebellious persons. Interdict means the same, in Latin, as prohibition, in Castilian, and it is imposed as a penalty upon certain places in which things are done for which they deserve to be placed under interdict; as, for instance, when a church is suspended on account of some offences its parishioners committed and are unwilling to make amends therefor: or when they place all the churches of a town under interdict on account of the guilt of the people, who are disobedient in any way, and are unwilling to reform; or when they place a whole country, or a kingdom under interdict, on account of the guilt of its lord. Suspension means the same as to keep a man under restraint, and not permit him to make use of his office or his benefice, without depriving him of them entirely. This penalty is imposed upon the persons of men on account of an offence which they commit as individuals.

LAW XV.**What Sacraments Should Be Administered in Places Under Interdict, and What Should Not.**

Prelates can suspend and place churches as well as certain localities under interdict, for the reason stated in preceding law; and the Holy Church deemed it proper to show what injury results to men from localities or churches being placed under ban. This is the following, namely: in no church under inter-

dict the bells should ring, the service be said, the dead be buried, or the Sacraments administered to any of its parishioners, except Baptism, of which no one should be deprived, and Penance and Communion, which should be given to the sick; and even those who are well can confess, when they assume the cross to go forth against the enemies of the Faith, although they may belong to those same localities, or to others. This also all pilgrims who pass through these countries can do, for the Holy Church granted them this privilege in honor of Our Lord Jesus Christ who was crucified.

LAW XVI.

What Ecclesiastics Can Do in Places Under Interdict.

Where an interdict is general over any country or town, or over an entire kingdom, although it was stated in the preceding law that no one should be buried while it lasted, the Holy Church decreed that those ecclesiastics who died during the time of interdict, and obeyed the sentence strictly, should be buried in the cemetery, but that this should be done in silence, without ringing of bells, or the other honors ordinarily shown to the dead when they bury them in places where churches are not under interdict. Moreover, the Holy Church permitted the Hours to be repeated two or three at a time, in cathedral or conventual churches; but required them to be spoken in a low tone, in order that they might not be heard outside, the doors being closed; and that the bells should not be rung, and, that before the Hours were said, all suspended and excommunicated persons should be driven out of the church.

LAW XVII.

In What Ways Prelates Can Impose Sentences of Suspension, and What Things Should Not Be Done While They Are in Force.

Prelates impose suspension upon men on account of the offences which they commit as individuals, as is stated in the third law preceding this one. This sentence is imposed in many ways, for occasionally suspension falls upon bishops, as well as upon other ecclesiastics sometimes depriving them of their offices and sometimes of their benefices and their jurisdiction, according to the offences which they commit: and, by way of greater punishment, even forbidding them, as well as laymen, to enter the church. Where a bishop is suspended from office, he should not repeat the Hours publicly as before; or perform the rites of consecration or confirmation; or confer holy orders; nor can he do any of those things which pertain to the duties of his office, and are dependent on the order to which he belongs. He can, however, still exercise his authority, as well as present to benefices, excommunicate, suspend, settle disputes and all other matters over which he has control by reason of his jurisdiction. But where he is suspended from his jurisdiction and from his office, he cannot perform any of the acts aforesaid, but he is entitled to receive the revenues of the church; unless when he was suspended, he was especially directed not to do so, or was suspended from the conduct of the service and from his benefice. This rule also applies to those whom the written law suspends; for, where they are suspended from the duties of their office, it is not understood that they are suspended from the use of their benefices, unless it has been inserted in the law that whoever commits such a sin should be suspended from the duties of his office, or from his benefice; for the penalty does not extend to more than what the sentence of the law, or that of the prelate who imposes it, expressly states. Where however, any prelate of minor rank, who has jurisdiction, commits a great sin, one of those styled

in Latin "enormous" which means very heinous, and any prelate should, on account of it, suspend him from the duties of his office for his entire life; it is understood by this that he suspended him from his benefice when suspension is imposed upon him, although this may not be expressly stated. But where he should be only suspended from his benefice, he then can do those things which he should do by reason of his office; and if he is suspended from his jurisdiction, he should not use it, but he can perform the duties of his office, and receive the benefits to which he is entitled by reason of the same. If he is forbidden to enter the church, he can do all other things which he should do, except such as cannot be done except in the church. But where another ecclesiastic, who has no jurisdiction, is suspended, and the prelate suspends him only from his office, it is not understood that this applies to his benefice; and where he is deprived of his benefice, he should not be prohibited from repeating the service, or from doing the other things which he should do by reason of his office; and where he is forbidden to enter the church, this does not deprive him of the power to perform the duties of his office outside of it.

LAW XVIII.

What Penalty Those Persons Deserve Who Do Not Obey the Sentence of Interdict.

The Holy Church imposed a penalty upon prelates as well as other ecclesiastics who, by reason of their audacity, despise the sentences of interdict or suspension, and refuse to observe them: and where one of these is suspended from office and repeats the service publicly, as he did before, he becomes irregular on that account, which means that, as a priest, he has violated the lawful rule which he should observe. This brings with it great disgrace, for he cannot be elected to any office, or use his benefice, or perform any service which he ordinarily did, nor, moreover, can anyone except the Pope, grant him a dispensation. This rule would also apply if he should repeat the service in a church which was under interdict. After this his prelate should admonish him to go to the court of Rome and make amends for the offence which he committed; and, if he refuses to do so, he is liable to the greater excommunication: and if, after this, he should not be willing to reform, he can be deposed, and be forever deprived of the benefice which he received from the Holy Church. And if, even then he should not be willing to atone for his offence, the prelate should apply to the king, or to the lord of the land, to banish him from his dominions, and he must do so.

If any monk, or regular canon, should repeat the service in a church under interdict, he must be confined in another stronger monastery, where the discipline is more severe, to perform Penance for the offence which he committed: and this treatment also should be applied to any nun who acts in this way: and where anyone of the laity, either man or woman, is forbidden to enter a church, and, despising the interdict, refuses to observe it, their prelate can excommunicate them for doing so. If they are unwilling to reform after they have been warned, the king should be appealed to, that he may use compulsion, as is stated in the case of ecclesiastics.

LAW XIX.

No One Should Enter into Contracts, or Combinations with Prelates, in Contempt of the Holy Church.

Prelates punish, by sentence of suspension or interdict, those who belong to their jurisdiction, for the faults which they commit, when they are unwilling

to correct their own; and instead of troubling themselves on account of the evil which they do, and obeying the sentences of the Holy Church, array themselves shamelessly and with arrogance, against the prelates who impose those sentences, and desire to place themselves on a level with them, by entering into agreements and combinations among themselves, in contempt of the said prelates, as if to avenge themselves for what they have done to them. This they do in the same way as excommunication is imposed, and they forbid one another and their dependents to purchase or sell in their towns, to cook in their ovens, grind in their mills, pass through their squares, or go for water to their fountains or to their mountains for wood, and they forbid them other things. They even perform other acts in many ways which are without reason and without law. And things like these, which are outrageous, and offer a bad example, should not be done; for those of inferior rank cannot appeal from their superiors, on account of the sentences they impose, or the commands they give, unless they act as the law requires, appealing from a sentence imposed upon them, if they are injured by it: and this our Lord showed in the old law, was a great evil, when the earth opened and swallowed up Dathan and Abiram, because they rebelled against Moses and Aaron, (who were superiors in rank and judged the Jewish people) and refused to obey their commands. Wherefore, the Holy Church ordains and forbids anyone to dare to commit such acts against her prelates, and those who do so, the latter can excommunicate for that reason.

LAW XX.

In What Ways the Sentence of Excommunication Is Imposed Unjustly, and to What Punishment the Prelate Who Imposes It Is Liable.

The prelates of the Holy Church and others who occupy their places, should feel great sorrow in their hearts when they are compelled to excommunicate any Christians: and if they experience pity and grief when they justly excommunicate them, how much more should they feel in this way when they do so unjustly. For this reason the Holy Church deemed it advisable to declare in how many ways the sentence is not just, in order that those who impose it, or those whose duty it is to do so, may know how to be on their guard in this respect; and the reasons for which it is unjust are three in number. The first is, when it is imposed contrary to the established form, as is stated in the law above which begins, "Prelates and those who occupy their places." The second is, when some reason for which excommunication may be inflicted is not just, or is of such a character, that this sentence should not be imposed on account of it. The third is, when he who imposes the sentence does so with ill will. Although the sentence imposed wrongfully in any of these ways, should be observed by those against whom it is directed, through reverence for the Holy Church: nevertheless, the Holy Fathers deemed it proper that he who imposed it should not go unpunished, and they ordered that he who inflicted such a sentence contrary to legal form, as above stated, should be forbidden to enter the church, and to repeat the service there for the space of one month: and that his superior (if the party upon whom it was imposed made complaint) should have the power to abrogate the sentence without delay, and condemn him who inflicted it to pay all the costs and expenses incurred by the complainant; as well as to indemnify him for any other injuries which he had received on account of the same. The complainant can also summon him before his superior, to make reparation for the injustice which he committed, because he excommunicated him when he should not have done so.

Moreover, those upon whom the above named penalty of not entering the church for a month is imposed, should take care not to enter it until that period has elapsed: for he who acts contrary to this by entering the church or performing his duties there, as he did before the sentence was imposed upon him, will, for that reason be guilty of irregularity, so that no one can grant him a dispensation for it except the Pope, unless he is a bishop, or prelate of superior rank: for these are not subject to a penalty of this kind, because, if they were, they could not perform many acts necessary for Christians, which they should do by reason of their offices; as, for instance, when they have to consecrate the chrism; or administer the Sacrament of Confirmation; or ordain priests; or visit churches in order to cause the faults which they find there to be corrected; and other things of this nature which do not belong to the duties of others except bishops. The Holy Church also deemed it proper that where the Pope, or his Legate, imposes any general sentence or suspension, by speaking in this manner, namely: "Any prelate, or other ecclesiastic who does so-and-so, or does not pay so many maravedis within such-and-such a time, shall be excommunicated or suspended:" in a case of this kind it is not understood that a bishop, or any other prelate of superior rank, is excommunicated or suspended, unless their names were especially mentioned in such a sentence. The penalty which the Holy Fathers decided should be imposed upon prelates who excommunicate others wrongfully in the second way; that is, when they are not able to show a just reason for doing so, is the same as above stated which is imposed upon such as err in the first way, except that they should not be forbidden to enter the church for a month. Where, however, any of those above named can show a just reason why he should not undergo the penalty, and he can produce proof, or the facts are evident, it must avail him; as, for instance, where he orders anyone to warn the party whom he was about to excommunicate, and, stating that he had warned him, imposes sentence, upon him, thinking that he had told the truth; where he alleges such an excuse as this, or another similar to it, he will not be liable to the penalty. But when prelates impose sentence of excommunication against persons through ill will, in the manner above stated, being impelled by rage or ferocity, or by a grudge; although a specified penalty may not be established by the law in such a case, nevertheless, he who does it commits a mortal sin against God, who knows the dispositions of all men good or bad, and will punish them in this world and in the next, as a just judge from whom nothing is concealed.

LAW XXI.

For What Reason No One Should Treat the Sentence of Excommunication Pronounced Against Him with Contempt.

The Holy Church of Rome ordained that where the sentence of excommunication was wrongfully imposed in any of the three ways mentioned in the preceding law, it should still be valid. It ordered that this should be, so that the sentence might be more dreaded by men: and that, always remaining obedient, they might grow in the Faith by means of good works. The sentence of excommunication has such great force that it becomes binding as soon as it is pronounced, which is not the case with other sentences. It is also of such a character, that though he against whom it is pronounced may appeal from it, nevertheless, he is bound by it until he is absolved: and this is the case even where he is not present, and was not aware of it, just as if he had been so. But he who does not know when he is excommunicated, enjoys the privilege of not being liable to punishment if he associates with men: nor does he become guilty of irregularity if he is an ecclesiastic, although he con-

ducts the service as he was accustomed to do; and this is understood to refer to the time during which he is ignorant of the sentence. If, however, any person should be excommunicated without the cause or the offence for which the prelate says he excommunicates him being founded upon truth: although he is excommunicated in the sight of faithful Christians, this is not true so far as God is concerned. This is understood to be the case when he against whom the sentence is pronounced, does not despise it in his mind, and this rule not only applies to the sentence, of excommunication pronounced against individuals, but to those against churches and localities as well.

LAW XXII.

How Prelates Can Excommunicate and Absolve, Except in Certain Cases.

Every prelate who has the power to excommunicate, has also the power to absolve from excommunication, except for the two reasons stated in the law preceding this Title, which begins: "The law establishes rules:" and this applies as well to those whom he excommunicates, as to others excommunicated by minor prelates subject to his jurisdiction. There are, however, excommunications which no one except the Pope, or some one whom he especially directs to do so, can remove, and there are six kinds of these. The first is, where anyone lays violent hands on a priest or a member of the clergy, except in the ways mentioned above in the laws which treat of this subject. The second is, where anyone burns a church, or any other building devoted to the purposes of religion; or crops in the field, or on the threshing floor; or anything else whatever, doing this knowingly and through malice. Distinction, however, exists here, for whoever burns a church or any building devoted to religious purposes, is excommunicated solely by the commission of the act; but he who knowingly burns any of the other property above named is not at once excommunicated by reason of his act, but the prelates have power to excommunicate him. Nevertheless after they have denounced those who burn churches as excommunicated, in the same way as they denounce others, neither they, nor anyone else, except the Pope, or some one whom he orders, can absolve the guilty parties; although they have the power to do this before they have denounced them as excommunicated. The third excommunication is, where anyone defaces a church, and for that reason is denounced as excommunicated. The fourth is, where anyone knowingly associates with those whom the Pope excommunicates. The fifth is, where anyone forges a letter of the Pope. The sixth is, where anyone commits the same sin for which the Pope has excommunicated someone else.

LAW XXIII.

How Many Kinds of Legates There Are, and What Power Each of Them Possesses to Absolve and Excommunicate.

Those persons whom the Pope sends from his court are called Legates, of these there are three kinds, and each of them has the power of excommunication and absolution, as stated in this law. The first of them in rank are such as the Pope sends from among those who dwell with him, as, for instance, the Cardinals who are part of his body: and these have power to absolve persons who were excommunicated because they laid violent hands on a priest, or on any other man or woman belonging to a religious order. They possess this power as well while traveling to the provinces where the Pope sends them, as while they remain in them, and even while they are returning, until they arrive again at the court: and they have power to absolve persons

belonging to that province or to any other, who may come to them wherever they may be. The second kind of Legates are those other than cardinals whom the Pope sends to any province, or to any other particular place, and these have not power to absolve others except such as belong to the localities where they are sent, and during the time that they remain there; for they do not possess the power of absolution while going or coming, as is stated above concerning the others, unless the Pope should order them to do so, or should give them a letter or privilege. The third kind of Legates are such as are so by reason of their churches, on account of the privilege they receive from the Pope; and these cannot absolve persons who are excommunicated because they laid violent hands on a priest, or on a man or woman belonging to a religious order, unless the Pope should especially confer power upon them to do so. They can however hear and settle the disputes of their provinces, and appeals can also be made to them from decisions, passing over certain judges including bishops as well as other minor prelates.

LAW XXIV.

In What Way Prelates of Superior Rank Can Abrogate Sentences Imposed by Their Inferiors.

A bishop should not remove the sentence of excommunication imposed by a dean, an archdeacon, or any of the inferior prelates of his bishopric, unless for the following reason, namely: where he upon whom it was imposed first makes amends for the offence which he committed and for which he was excommunicated, and even then he should do this with the knowledge of him who pronounced the excommunication. Where, however, he removes the sentence, even though he should not have done so, the party will be absolved, and this is the case on account of the superiority which he possesses over all those of his bishopric; and although a bishop can do this in opposition to the minor prelates of his bishopric, it is not understood that an archbishop can do so in opposition to the prelates of his province. For those whom every bishop excommunicates in his bishopric cannot be absolved by the archbishop, and, if he should absolve them, his act will not be valid, except in the two following cases. One is where someone complains to the archbishop because his bishop excommunicated him; the other where he says that he appeals to him because he is about to excommunicate him: for in either of these instances the archbishop can absolve him, if he should desire to do so; although it would be more proper for him to send him to tell his bishop to absolve him.

LAW XXV.

For What Reasons Bishops, and Priests Qualified to Say Mass, Can Absolve Excommunicated Persons Who Should Resort to the Pope.

Anyone of those mentioned in the preceding laws as having laid violent hands on a priest, or on any man or woman belonging to a religious order, or who is prevented by some other lawful impediment from resorting to the Pope; though it has been stated that no one can absolve persons like these from such an excommunication, except the Pope, or some of those to whom he has granted the power to do so, as is stated in the preceding law; nevertheless, their bishops can absolve such persons, where an impediment exists, as aforesaid, on account of which they cannot go to Rome; and not only can they absolve them, but also the priests to whom they confessed can do so. What is above mentioned concerning priests means that they can do this when they are called upon at the hour of death, for under any other circum-

stances they cannot grant such absolution. The Holy Church approved of this in order that men might not incur the danger of losing their souls, being unable to go to the Pope to be absolved. Bishops, as well as priests, whose duty it is to absolve them, must, however, compel them to promise under oath that as soon as the obstacle which prevents them from going to Rome is removed, they will go there; and they should direct them, in the interval, to make amends for the fault they have committed.

LAW XXVI.

How Those Who Have Been Excommunicated Can Be Absolved.

The sentence of excommunication must be removed by the prelates, and the way in which the Holy Church ordained that this should be done is as follows. First, the prelate who desires to absolve an excommunicated person must compel him to swear on the Holy Gospels, or in his hands, that he will be subject to the commands of the Holy Church, and after he has sworn this, he should absolve him at the church door by speaking as follows: That, by the power he derives from St. Peter and St. Paul, he declares this person absolved from the bonds of excommunication into which he fell by reason of his disobedience: and then he should repeat the *Miserere mei Deus*, and reconcile him, which means restore him to his former condition, striking him on the shoulders with rods or straps while he repeats each verse of the Psalm, until it is finished; then he should repeat the prayer which is said over those who are reconciled, sprinkling Holy water over his head, taking him by the right hand and leading him into the church.

This manner of granting absolution is common to all prelates, to those who are superior as well as those who are inferior in rank, for the purpose of reconciling persons excommunicated by the greater excommunication, excepting those against whom the sentence called *Anathema* has been pronounced; for this has its own peculiar method, and must be removed with solemnity, as is stated in the following law.

LAW XXVII.

How Those Who Have Been Excommunicated by the Solemn Excommunication Called *Anathema*, Should Be Absolved.

The sentence of excommunication which bishops pronounce against men who commit great sins, and are not willing to make amends for them, as is above stated, is called *Anathema*. In order to remove this sentence, a separate method exists, and which is this, namely; he who is excommunicated in this way, in order to be absolved, must manifest in himself three things; first, that he repents of the evil which he committed; second, that he begs for mercy with great humility, that he may be pardoned; third, that he binds himself to make amends, and swears that he will obey the commands of the Holy Church. When this has been done, the bishop who is to absolve him must come to the door of the church, and bring with him twelve priests qualified to say mass, and he who is to be absolved must throw himself prone upon the earth before the bishop, begging the mercy of absolution, and promising him that, from that time forward, he will not commit such an offence: the bishop must then absolve him, take him by the hand, and conduct him into the church, giving him the right to associate with true Christians: and the priests must enter along with him and with all others there present reciting the Penitential Psalms; and, when they have finished, the bishop must repeat the

prayers which are established by the Holy Church for this purpose; for as this kind of excommunication is imposed with great solemnity, it should also be removed in the same manner.

LAW XXVIII.

How Prelates Should Absolve and Reconcile, and What Things They Should Order the Excommunicated Person to Do, Who Swore to Obey the Commands of the Holy Church.

Prelates should neither reconcile nor absolve excommunicated persons unless they compel them to swear beforehand that they will obey the commands of the Holy Church, as is stated in the preceding law. And, for the reason that the offences which men commit, which render them liable to excommunication, are of many kinds, and as a difference exists between them, the Holy Church deemed it proper to make a distinction so that the bishops might direct those who are absolved how to make reparation, each one for the offence which he committed. Wherefore, she ordered that he who had undergone the greater excommunication as the result of a judgment, as, for instance, for being disobedient and refusing to appear when he was summoned; or for any one of the other three reasons stated in the law of this Title which begins, "Contumacy:" or for any other cause whatsoever, which was not proved or made evident; should, on account of the oath which he took to endeavor to comply with the law, be required to give sureties or pledges, if he could do so. Moreover, she commanded that where anyone had been excommunicated on account of some notorious offence which he had committed; as, for instance, for laying violent hands on a priest, or on a man or woman belonging to a religious order, or on any other person of this kind, he must, before he is absolved, be ordered to make reparation to the party whom he injured; and moreover, he must promise that he will never do such a thing again, unless he did it for one of those reasons for which the laws of this book permit it to be done, as, for instance, in self-defense, or where he acted by order of his superior; or for any lawful purpose; or where he occupied such a position that his duty required him to act as he did.

LAW XXIX.

There Should Be as Many Absolutions as There Were Excommunications, and He Who Obtains Absolution, Is Not Absolved If He Conceals the Truth.

Where a priest holds benefices in many bishoprics, and commits offences in different places, so that several prelates are compelled to excommunicate him; the Holy Church ordained that in a case of this kind such a person could not be absolved unless this was done by every one of those who excommunicated him, unless all of them should delegate their power to one who could then absolve him. This rule would also apply where any person was excommunicated for several causes by a single prelate; for, although he might absolve him from any one of them, it is not understood by this that he is absolved from all the others which were not mentioned in his absolution. Moreover, the Holy Church ordained that if any excommunicated person should obtain absolution by concealing the truth and telling a lie, such absolution would not be valid. This would be the case where a prelate excommunicates a man on account of many offences which he has committed, and that man goes to the Pope, or to some other ecclesiastic superior in rank to the one who had excommunicated him, and obtains absolution by concealing

the truth, and not stating all the reasons why he had been excommunicated: for in a case of this kind and in others like it, the absolution which he obtained in this way would not be valid.

LAW XXX.

In What Cases the Sentence of Excommunication, Denounced Against Anyone, Is Not Valid.

There are six instances in which the sentence of excommunication is not valid, and where the Holy Church did not deem it proper that it should have power to bind those against whom it was pronounced. The first is, where prelates desire to impose it upon anyone, and the latter, knowing that this was being done without cause, lawfully appeals before they excommunicate him. The second is, where a prelate excommunicates anyone who refuses to commit some offence which he ordered him to commit; as, for instance, if he should order him not to believe in God, or to say mass for some heretic, or not to give food to his father, or something of this kind which is contrary to the Faith, or commands him to commit a mortal sin. The third is, where an archbishop, bishop, archdeacon, or archpriest, orders a priest to render him greater service than is established by law; and he, not being willing to do so, is excommunicated for this reason. The fourth is, where anyone who did not know the law, and fearing that he would be excommunicated, declares that he places himself under the power of the Pope; for, if after this he should be excommunicated, the excommunication would not be valid, although he may not appeal in any other way. The fifth is, where a prelate excommunicates a person, and afterwards, seeing others associating with him, excommunicates them without giving them warning. The sixth is, where a prelate, or a priest who imposes the sentence of excommunication, is a heretic, or one who is himself excommunicated or deprived of the power which he possessed; for no person of this kind has authority to excommunicate or suspend anyone else.

LAW XXXI.

To What Penalty Those Are Liable Who Do Not Observe the Sentence of Excommunication.

Those who do not obey the sentence of excommunication commit a very great offence, and, for this reason, the Holy Church ordained that they should not go unpunished, and ordered that if any layman should treat it with contempt, refusing to observe it, pardon should be granted him later and with greater difficulty than to another person, although the atonement which he made might be accepted without delay: and the Holy Church holds that he who commits a sin of this kind for this reason, more readily becomes liable to death, or other misfortunes which afflict men in many ways. Where a priest acts in this manner, and performs the duties of his office, he would become, on this account, irregular, and should be deposed.

The Church inflicted another penalty where anyone had been excommunicated by his prelate, and he, claiming that he had been wrongfully put under the ban, treats the sentence with contempt; in this instance such a person becomes excommunicated solely by reason of the contempt. Moreover, the Holy Church ordained that where anyone was excommunicated in one church, he should be avoided in all others, as well as in the one in which he was excommunicated. She also imposed as a penalty upon a priest who was justly excommunicated, that he could not, during the time in which he

was excommunicated, claim the revenues of his benefice to which he had formerly been entitled, nor could he obtain other new benefices, although he could claim his revenues if he had been suspended for a fault which was not serious, or did not treat the excommunication with contempt.

LAW XXXII.

What Penalty Those Must Undergo Who Are Under Sentence of Excommunication for the Space of a Year.

Where anyone becomes rebellious after being excommunicated, so that he does not desire to be free from the excommunication, the prelates must proceed against him in the following manner, namely: where he acts in this way on account of some heresy of which he is suspected, after a year has passed, they should declare him a heretic: and if they excommunicate him for any other reason whatsoever, and he had the right of presentation to a benefice, or any other right in any church through which he was entitled to receive an income, he must lose this for the entire time he remained under sentence of excommunication. Where he is a nobleman, and is not willing to reform, his vassals should not obey him during the time he was excommunicated, nor should they render him the services which they are required, to render, or give: and this is understood to be the case where a year has elapsed, and he has been admonished by his prelate, and did not wish to be free from the sentence of excommunication.

LAW XXXIII.

To What Penalty Those Are Liable Who Associate With Persons Under the Sentence of the Greater Excommunication.

True Christians should not have ordinary intercourse with a person who is under the sentence of the greater excommunication. And, for the reason that the Holy Church understood that this was something productive of many evils to those who associate with him, it forbade them explicitly to do so, and imposed a penalty upon them for it, as follows, namely: that he who had any partnership, or knowingly associated with, a person excommunicated by the greater excommunication, whether he belonged to the jurisdiction of the bishop who pronounced the sentence, or to that of some other bishop; if his act consisted in aiding or advising the guilty party, or agreeing with him, because he was guilty of the same sin for which the other was excommunicated, he, also, should be liable to the same excommunication. Moreover, when a prelate imposes a sentence in the following way, saying: that he excommunicates such-and-such a man, and all who are his advisers, and who connive with him, or associate with him; the Holy Church ordained that all who do so should be excommunicated with the greater excommunication, unless the same prelate who pronounced the sentence, in one of the above mentioned ways, should afterwards himself associate with the excommunicated party; for a person of this kind would not be liable to the greater, but to the lesser excommunication. But upon those who associate with one who was not excommunicated in this way, but more simply, as if the prelate should say: "I excommunicate such-and-such a one, on account of a certain offence which he has committed;" the Holy Church imposed the penalty of the lesser excommunication. However, those who talk or associate with persons under the lesser excommunication should not, for that reason, themselves be excommunicated.

LAW XXXIV.

In What Cases One Should Not Associate With an Excommunicated Person, and When He Can Do So.

True Christians should not associate, or enter into negotiation with, excommunicated persons, on account of the evil which will result to themselves, and the punishment to which they will be liable, as stated in the preceding law. And, for the reason that some are in doubt as to the cases in which they should not do these things, the law of the Holy Church deemed it advisable to indicate them, and they are as follows, namely: they should not give them the salutation of peace, or talk with them; nor should they pray with them anywhere, or eat or drink with them; nor associate with them in any other way like this. Nevertheless, there are some instances in which they can do so for the benefit of the excommunicated person; as, for instance, when they advise them to free themselves from the excommunication; or where it is, to the advantage of the person to speak to them, as when the excommunicated person owes one something; and he demands it of him: or on account of the marriage relation existing between husband and wife, for this has such force that it exempts her from excommunication, if she associates with her husband, although it does not excuse him if she were excommunicated; and the reason for this is that the husband has the power to compel his wife to make amends, and be freed from the excommunication, which she cannot compel him to do. Moreover, sons and daughters who are under the control of their father who has been excommunicated, should not be excommunicated if they associate with him; nor should the servants of the house, nor the paid laborers who cultivate his land, nor his slaves, nor all others who are his vassals, so long as they did not advise him, or participate with him in the offence for which he was excommunicated, and do not desire to associate with him any longer than the time they owe him service on account of the pay which they receive from him, or for some other reason.

The Holy Church, however, did not deem it advisable that either fathers or lords should be exempt from this punishment, where their sons or vassals incur this sentence of excommunication and they associate with them. The reason for this is that fathers have power over their sons, and lords over their vassals, to teach them and punish them in order that they may avoid committing such offences as render them liable to excommunication, which the latter cannot do in the case of their fathers or their lords, and if they should fail to do this they are to blame. For this reason they cannot be exempt from the above-named penalty, if they associate with them while they are excommunicated. Nor should priests associate with their excommunicated bishop, unless they were reared by him or are servants in his house: and one who does associate with him while he is excommunicated, not being aware of the fact, is not liable to this penalty. There is another reason why a man should not be liable to a sentence of excommunication although he associates with excommunicated persons, and that is where some one is compelled to pass through a country where excommunicated persons live, and cannot find company or shelter, except with them: and, moreover, the Holy Church does not forbid alms to be given to an excommunicated person, if he is seen to be in distress.

LAW XXXV.**How Priests Should Act If an Excommunicated Person Enters a Church While They Are Conducting the Service.**

Where any one is publicly excommunicated with the greater excommunication, he should not enter a church, and if he should do so while the Hours are being said, the priest should cease to repeat them. This is understood to refer to the service of the mass, as well as to the other Hours, unless when the excommunicated person enters the church, the priest who was saying mass had already begun the Communion, for then he should not stop until the body and blood of Our Lord Jesus Christ have been swallowed: and the reason for this is, that such a holy and honorable thing should not be left unfinished after it had been once commenced. If, peradventure, he should not be willing to go out after having been warned by the priests, and the place where this happened belongs to the territory of the church, they must forcibly expel him; and if they are unable to do so, they should ask the assistance of the laymen to eject him, or communicate the fact to the lord of the land that he may punish him, and forbid him to return. But where a person enters the church, and not all are aware that he has been publicly excommunicated, those who do know it must warn him secretly to leave, telling him that he is committing a mortal sin because he does this while excommunicated; and, if he should not be willing to do so, all those in the church, priests as well as laymen, must go outside. This, however, should be done in such a way as not to expose him; for no one should disclose to his neighbor a secret sin which the latter has committed, except where he speaks to him of it in such a place that it will profit him, and where he will sustain no injury from doing so: and, therefore, his company should be avoided in this way in order that he may be ashamed of, and make reparation for, the fault which he committed, and in this way be relieved more speedily from the excommunication from which he suffers.

LAW XXXVI.**What Things Are Forbidden to Those Who Are Excommunicated With the Lesser Excommunication.**

A person excommunicated with the lesser excommunication cannot enter a church, while mass is being said, although he can listen to the other parts of the service, and this is the case because he has no right to take part in any of the Sacraments: and, if he is a priest, he should not repeat the Hours with the others, although he can listen to them as laymen do, and they should not administer any of the Sacraments to him. Where, however, one under the sentence of the lesser excommunication treats it with contempt, or knowingly associates with excommunicated persons, he commits a mortal sin by doing so, and can be excommunicated with the greater excommunication, if he should not be willing to avoid committing these faults. But where he undergoes this through associating with excommunicated persons, not paying the attention to his conduct that he ought; or where it happens accidentally that he was compelled to accompany them, or did so through regard for them, not doing this knowingly, or through contempt for the sentence; such a person as this, if he is a priest, can repeat the Hours with the others but should not say mass, or hear it, or administer or receive any of the Sacraments of the Holy Church; this is the case because the power of the Sacrament is so great that, although in an instance of this kind the priest who administered it is excommunicated, it will benefit him who receives it.

LAW XXXVII.

What Penalty Those Deserve Who Associate With Persons Excommunicated by the Pope; and in What Way Those Who Are Suspended Should Repeat the Service.

Priests should not permit any ecclesiastic who has been excommunicated with the greater excommunication by the Pope, to associate with them in the service, or in any other way: for if they should receive such a person in their company they will, for that reason, undergo excommunication, just as he has, and no one can absolve them except the Pope, unless some one else should do so by his order; and this is so on account of the lofty position and superiority which the Pope enjoys over other prelates. Moreover, priests who have been suspended by their prelates should not repeat the service in the church along with the others, although they can do so apart, uttering it as anyone would an ordinary prayer. This also those who have been excommunicated with the lesser excommunication can do, for they can repeat the service in the church, as has been stated of those who are suspended. Anyone under the greater excommunication, however, cannot repeat the service in the church under any circumstances, although he can do so outside, uttering it like a prayer, as is above stated.

LAW XXXVIII.

On the Punishment to Which Those Are Liable Who in Any Way Assist the Enemies of the Faith Against Christians.

The Church calls all those false Christians who, in any way, give assistance or advice to the enemies of the Faith against true believers; and also all such as give or sell them arms, or ships or galleys, or wood for their construction, as well as those who carry it. The Holy Church considers that those who assist the enemies of the Faith in any of the above mentioned ways, or in any that are similar, are guilty of such great deceit that, solely by their very act, She pronounces them excommunicated with the greater excommunication, although they may not have been publicly excommunicated; and she orders that all the property of such people shall be seized by the lords of the country in which they dwell, as soon as they have done any one of these things: and in addition to this, She permits whoever arrests them to hold them as his slaves, so that he can sell and use them just as if they were Moors. If anyone should happen to resort to them for assistance against the Christians, or they should give aid or advice to others that they may do so; She commands that those who have committed so great an act of hostility as this shall never be buried in the tombs of the Church, unless, before they died, they made ample atonement for this to God, and to their natural lord against whom they furnished that assistance. Where it happens that some of them had already been buried in consecrated ground, the law directs that their bones shall be removed with marked dishonor, as those of men who committed great treason against God and against their neighbors, whom it was their duty to assist, and not to oppose. Although persons of this kind should not only be excommunicated on account of their deeds, or by reason of the advice which they gave to the enemies of the Faith, the Holy Church ordains, in addition, that on all Sundays and holy days, they should be publicly denounced as excommunicated, in the presence of true Christians.

TITLE X.

On Churches, and the Way in Which They Should Be Built.

Moses was a man whom God loved greatly, and for that reason He commanded him in the old law to build a tabernacle which resembled a tent, in which the children of Israel were accustomed to offer up prayer and sacrifices to God. Afterwards, King Solomon, in imitation of it, built the temple of Jerusalem, which, moreover, was the first house of prayer that the Jews possessed, and from that time forward they built, and were accustomed to build houses called synagogues, in which they prayed, and offered up their sacrifices.

Christians, under the new law, in imitation of the temple, constructed churches in which they made, in a cleanly and proper manner, the genuine sacrifice of the body and blood of Our Lord Jesus Christ, and prayed to God to pardon their sins, and praised his Holy Name. And this was not done without cause; for as the Jews, who lived, as it were, in the shadow of his law, and did not understand it as they should, erected such great and noble temples where they sacrificed beasts and birds; so much more should Christians build noble and well-ordered churches, for the reason that they possessed, and still have, the true knowledge of God and of the law; and because they understand it better and more perfectly than the Jews; and because in said churches is offered the sacrifice of Our Lord Jesus Christ. Wherefore, since in the Titles preceding this one we have treated of prelates and other priests whose duty it is to make and to minister the Sacraments, it is proper to speak here of churches, and to explain thoroughly why they should be built in one place rather than in another; and what a church is; and in how many senses its name can be understood, and defined and by whose command it should be built; and in what way; and who can rebuild it; and why churches can be removed from one place to another, and increased or diminished in size; and who has power to repair them when it is necessary. Also how they should be consecrated; and what meaning those ceremonies have which are performed during their consecration; and how they should be reconciled when any offence has been committed in them.

LAW I.

What a Church Is, How This Name Is Understood in Three Different Ways, and by Whose Command It Should Be Rebuilt.

It is eminently proper for Christians to know what a church is, and although the Scriptures call many things by this name, according to the decree of the Holy Fathers there are only three kinds which are most used, and by which others should be understood. The first is a holy place surrounded by walls and covered above, where Christians assemble to hear the service, and pray to God to pardon their sins; the second is the entire body of true Christians who are to be found in the whole world; the third is all the prelates and clergy of any one place who are devoted to the service of God in the Holy Church. The Holy Fathers explained by whose command the first of these should be built, and declared that churches should be erected by the order of each bishop in his bishopric, and that no one should do this in any other way; and where he did so, the building would not be a church, nor should it be entitled to this name, nor should any priest say mass or any other part of the

service in it, unless the bishop of that locality afterwards granted him permission to do so. This rule will also apply where a church is demolished from its very foundation, and it is found to be desirable to rebuild it. But where any part of it falls, or it is removed by taking it down little by little in order to reconstruct it, it would not be necessary under such circumstances to ask permission of the bishop unless the congregation desires to do so, for it has, of itself, the power to make these changes.

LAW II.

How a Church Should Be Erected When It Is Desired to Build One, and How It Should Be Endowed.

When any persons desire to move a church, or build a new one, they cannot do so except under the order of the bishop, as stated in the preceding law: and, when they are about to begin, the bishop should go to the place where they desire to erect it, and in the presence of many men, where they desire the altar to be situated he should kneel down and pray to God, repeating such prayers as are designated for this purpose; and, when the prayers have been said, he should himself lay the first stone, and deposit upon it a cross, and above that stone the altar should be located. He must then state, in the presence of all, that he grants this place for a church. But, before the bishop does this, he must ask those who desire to build the church to set apart certain lands which may always belong to it, and are of such a character as to yield an income on which two priests, at least, who are to serve the church may live. Property of this kind is called in Latin an endowment. Such lands should yield a revenue sufficient for the illumination of the church, and out of which the priests may be able to pay their dues to the bishop, and entertain guests. Where, however, the bishop cannot come himself and perform the ceremony above mentioned, he can send an arch-priest, or any other priest whatsoever, to do so.

LAW III.

Who Should Endow a Church.

He who builds a church should set apart an endowment for it, as is stated in the preceding law; and if he should not do this at the time, he is bound to do so when the church is consecrated, and the bishop should not consecrate it before this is done. If he should happen to be so careless as to consecrate the church before it was endowed, he can call upon the person who built it, or his heirs afterwards, to endow it: and if his heirs should not be willing to do so, the bishop is bound to endow it out of his own property, for the reason that he was negligent in not seeing that it was provided with lands before he consecrated it. Every man who begins to build a church under the orders of a bishop is required to finish it, and, if he should be unwilling, the bishop can compel him to do so.

LAW IV.

No One Should Have Mass Said in His Own House, and What Penalty He Incurs Who Says It There.

No one should erect a chapel with an altar in his own home, or anywhere else, except by order of a bishop. Nor should anyone have mass said where there is no chapel, except the prelates of higher rank in the Holy Church who have authority to do so: and this is forbidden in order that those

who do not fully believe in our religion may not have an opportunity to evade the sacrifice of the body of Our Lord Jesus Christ, in contempt of the Holy Church; and, where persons act contrary to this regulation, the prelates of the Holy Church have power to excommunicate them for that reason. Moreover, any priest who says mass in any of the above named places, unless the bishop orders him to do so, should be deposed.

LAW V.

In What Places Mass Should Be Said, and for What Reasons, and in What Places It Should Not Be Said.

Christians can have oratories in their houses, if they so desire, in order to pray to God in them; nevertheless, they should not chant mass there, or say it unless by order of the bishop, as stated in the preceding law. And, even in such places as the bishop permits it to be said, it is not understood by this that it can be said there every day: for on Easter, and on the great festival days, it should not be said in such places as these, but only in cathedral or parish churches. But where churches have been demolished or destroyed by water or by fire: or are so distant from the people that they cannot resort to them without danger, as, for instance, through fear of their enemies, or on account of inundations or snow, or for any other reason of this kind which prevents them; the priests can then chant mass on Easter, or on other great festivals, in chapels or other places where bishops grant them permission to say it, until the churches are repaired, or those impediments are removed, on account of which persons cannot resort to them. Mass can also be said in other places, as, for instance, in tents, while people are traveling where there are no churches, and during the march of an army: and even outside in a field, if it is understood that this can be done without wind, rain, or any other bad weather preventing it. This, however, is not understood to apply to anyone who is traversing the sea, for mass should not be said on a ship, on account of the danger which may arise from the waves, or through the motion of the winds. Nor can it be said over the tombs of the dead, except those of such as were declared by Rome to be saints, for the Holy Church deemed it better that it should neither be said nor heard, than that this should be done in an improper place; and for mass to be said in a suitable place, as above mentioned, a consecrated altar is necessary, as well as all the other things which belong to this sacrifice of Our Lord Jesus Christ, as is stated in the Title on the Sacraments.

LAW VI.

Who Can Build Churches.

Every man who is able to build a church ought to consider himself fortunate, since it is where such a holy thing as the body of Our Lord Jesus Christ is to be consecrated: and although any man or woman can build it for the service and honor of God, under the order of the bishop; as is stated in the second law of this Title, he who builds it must carefully observe two things, namely: to have it complete, and properly arranged; and this applies to the building as well as to the books, vestments, chalices, and everything else necessary for the honor and service of the church, for he who builds one in any other way would rather appear to do so through scorn and contempt, than for its service and honor.

LAW VII.**For What Reasons New Churches Should Be Built, or Others Moved From One Place to Another.**

The Holy Church declared that there were four reasons why churches could be moved from one place to another. The first is, where a church has a large congregation, so that, on account of the number of the people, another one must be built, and its parishioners divided between the two. The second reason is, where persons dwell in such a dangerous neighborhood that they are very frequently attacked by the enemies of the Faith and by other wicked men, so that on account of the injuries which they have received from them, or the fear which they inspire, they are compelled to move to another and a safer locality then, for this reason, a new church can be erected in the place to which they move, and the other can be abandoned. The third reason is, where the church is so situated that persons cannot attend the service without danger: as, for instance, where a river runs between the village and the church, and when the waters rise they cannot go there, or where they are prevented in some other way; so, for a cause of this kind, a new church can be built elsewhere. The fourth reason is, where this is done to improve a church or a monastery; as, for instance, if the place where it is situated is very unhealthy, or is too small, or is dangerous on account of wild beasts, then they can remove the church elsewhere to a more healthy and safe location. and where they can increase the size of the building.

LAW VIII.**In What Places New Churches Should Be Constructed, and How They Should Be Reduced in Number, or Combined With Others.**

When anyone desires to erect a new church, which means to build one, he should exercise supervision over those who have this to do, in order that they may select an honorable and convenient place, for it should not be built in a vile neighborhood; as, for instance, near where bad women live, or adjoining a slaughter house, or in a place where they throw the refuse of the town, or in any other location similar to these. Moreover, care should be taken not to erect it in a lofty or strong situation, so that the town could be destroyed by its means, or it could be used as a protection to attack the town or the palace. Nor should too many churches be built, and where there are too many the bishop must reduce their number as he thinks best. Those are called too numerous where the priests who serve them have not sufficient revenues on which to live; and churches of this kind the bishop can unite with others together with their lands and parishioners. But when the bishop desires to diminish the number of churches so that they may be abandoned for the above mentioned reason, he must remove the relics from those which are superfluous, close their doors, and leave them in this condition: for although they may be deserted and fall in ruin for this cause, or for any other whatsoever, nevertheless those places which were churches and cemeteries will always remain holy, and should be watched, so that no one will be bold enough to remove the wood or stone from the ground which has been consecrated in order to use them in other buildings; unless they should be employed in the construction of another church, or a monastery, or a hospital for the benefit of the poor. And, even where they are used for the purposes above mentioned, they should not be placed in any vile situation, as in the stable or kitchen, or in any other place of this kind.

LAW IX.**For What Reasons the Parishioners of One Church Can Be Divided Into Two Congregations, and One Church Be Erected on the Lands of Another.**

Old churches should not undergo loss or diminution on account of the construction of a new one. Where the priest opposes it should not be erected, but where there is such a large congregation in a church that the building will not contain it, and the bishop is petitioned to order another to be built, and to divide the parishioners into two parts, as is stated in the third preceding law or where two congregations attend it, and one is so distant that the people cannot reach it without a great deal of trouble; then, in order to avoid this trouble, they can build another church, by order of the bishop, which may have its own priest.

This, however, is to be understood in this way, namely, that in the first church there is revenue enough, and a sufficient number of parishioners to enable the priests who have charge of it to live in a moderate way, as stated in the preceding law; for, otherwise, they should not build the second church, or remove any parishioners from the first one; but where the priests are able to live comfortably on the revenues which remain, and are compelled to build the church; on account of the loss which the first one suffers through being deprived of its parishioners, the law permits its priests to present to the bishop a rector to be placed in charge of the second church; and, besides this, it grants them permission to receive from the second church a certain income, in the nature of rent, in acknowledgment of superiority, and the bishop should indicate the amount of this, in proportion to the revenues of the second church. And, although the first church suffers a certain amount of injury and loss on account of the parishioners which it gives to the second, through being deprived of their offerings and first-fruits, and the legacies which they bequeath at their deaths; nevertheless, it does not lose the tithes of the estates which it received before the other church was built unless the priests to whom the first church belongs gave their consent when the other was built that it should have a certain share of the landed property, or a certain member of the parishioners who pay the tithes, for whatever they granted at that time will remain forever in force; and although the bishop has not the power to transfer property which yields tithes from one church to another, as above stated, if he thinks that it is advisable for any of the reasons stated in the third law preceding this to build the second church, he can order the said church to be erected within the territorial limits of the other, and appoint a priest over it to serve it, although the priests of the first church may oppose the latter, and are unwilling to present him for the place, as above stated.

LAW X.**No Church or Altar Should Be Built on Account of the Whims or Fancies of Anyone.**

Some men fraudulently discover, or build altars in fields or in towns, saying that there are relics of certain saints in those places and pretending that they perform miracles, and, for this reason, people from many places are induced to go there as on a pilgrimage, in order to take something away from them; and there are others who influenced by dreams or empty phantoms which appear to them, erect altars and pretend to discover them in the above named localities. Wherefore, in order to abolish such deception, and many other errors which may occur, the Holy Church ordained that when such events took place, and the bishop of the neighborhood heard of them, he could

order these things to be demolished: and if he should not be able to do so, because the people took it ill, and could not suffer them to be destroyed, the bishop should then admonish them not to visit those places in pilgrimage, unless the body or relics of some saint should have been undoubtedly found there, or his dwelling had been built in that place, or he had suffered martyrdom there.

LAW XI.

Who Should Repair Churches When They Are in Need of It.

The prelates and priests of each church should repair it when this is necessary, and they should do so out of the revenues received from them; and, when these are not sufficient for the purpose, the bishops and priests who hold benefices in that church should contribute what is lacking to repair it, in proportion to the revenues collected, each one reserving from them what he needs for his support; for, as it pleases them to profit by the revenues which they collect from the churches, so they should also be willing to contribute their share, to things of this kind; and where the bishop, or any other person whosoever, collects the income set apart in this manner, he is bound to refund it whenever it becomes necessary, and no one has a right to appropriate it for any other purpose; for it would be a great sin, if the portion which the Holy Fathers set apart to build churches with should be spent by the bishop, or by anyone else who may take it for his own affairs, while the churches are neglected, and deprived of what they need. And if, peradventure, the bishop, or anyone else, should appropriate some of the revenues for himself, and should delay to repair the church when it is necessary, he is required to do so. But after churches are finished, or when there is no more work to be done, the said revenues should be applied to other purposes which may be for their benefit.

LAW XII.

Who Should Consecrate Churches and Altars.

When a church is finished and all the work on it is ended, the bishop in whose bishopric it is situated can consecrate it, or ask some other bishop to do so, where the church is endowed with lands, as above stated. No one but a bishop has the right to consecrate it, and the same rule applies to the consecration of altars. There is, however, one ceremony for the consecration of an altar and another for that of a church; and the bishop can perform both in one day, if he should so desire, or in two days, one after the other, or in a still longer time. Moreover, two bishops can do this in one day, one consecrating the church and the other the altar: and after the church has been consecrated, no one should erect a new altar therein without his bishop's consent, and, when there are several altars there, the bishop can order the superfluous ones to be removed. No altar should be consecrated unless it is made of stone, and, when it is consecrated, some relics should be deposited in it.

LAW XIII.

At What Times Churches and Other Things Which Require to Be Sanctified, Should Be Consecrated.

Where a bishop desires to consecrate an altar or a church, he should chant the mass when he wishes to do so. Where, however, the bishop performs the consecration, and another priest says mass, the consecration will be valid, and the bishop can do this on other days as well as on festivals. The consecra-

tion of bishops, and the conferring of the veil upon virgins belonging to holy orders, or making the chrism, or the ordination of priests, cannot be done except on certain specified days; for bishops should be consecrated on Sundays, and not on other days. The veil can be given to virgins on the festival days of the Apostles, and on the day of the Epiphany, and on Holy Saturday, which is the day before Easter, and also on all Sundays. Where, however, a virgin desires to take the veil while she is ill, in order that she may not die without it, it must be given to her, even though this should not be done on one of the designated days aforesaid. The chrism should not be made upon any other day but Holy Thursday: and priests should not be ordained except on the four Ember Days, or on the others mentioned in the Title concerning prelates.

LAW XIV.

What Things a Church Requires in Order That Its Consecration May Be Thoroughly Performed.

A church should be consecrated, and in order that the consecration may be complete it is necessary that seven things be done. First, twelve crosses must be placed around it on the inside of the walls, so high that no one can reach them with their hands: three on the east, three on the west, three on the south, and three on the north. Second, all the bodies and bones of the dead who were excommunicated, or belonged to another religion, must be removed from the church. Third, twelve tapers must be lighted, and each placed upon one of the crosses on nails driven in the middle of the latter. Fourth, ashes, salt, water, and wine must be mixed together, and, while the bishop repeats prayers, this must be scattered around the church in order to purify it. Fifth, the bishop must write with his crozier the a, b, c, of the Greeks and of the Latins in the ashes scattered over the floor of the church; and this should be done along the length and breadth of the building, so that these letters may be united in the middle in the form of a cross. Sixth, the bishop must anoint the crosses with chrism and with holy oil. Seventh, incense in many parts of the church must be burned.

LAW XV.

What Benefits Result to Christians from the Consecration of a Church.

The crosses which the priest makes, and all the other acts which he performs in the church when he consecrates it, as stated in the preceding law, have every one of them its significance and its similitude. For these reasons the Holy Scriptures gave the church four names. The first is, "The house of weeping and penitence." The second is, "The house where punishment is learned." The third is, "The house of repose and protection." The fourth is, "The house of prayer;" and it showed why it is called by each one of these names, as is stated hereafter in the laws of this Title.

Great profit results to the pious as well as to sinners from the consecration of a church. The pious receive three benefits therefrom; first, through its means they are preserved by the Holy Spirit from falling into sin: second, Jesus Christ the Son of God, for whom it is consecrated, gives them knowledge to understand the truth; and third, God the Father protects them with his power, so that the enemies of the soul with whom they contend, cannot overcome them, for these are constantly striving to prevent them from being saved. Sinners profit by it, for the reason that this place is more convenient for performing Penance than any other: and they also profit by its consecration on

account of two things out of the seven which are done there. One is, the removal from it of the bodies of the dead above mentioned. The other is, the sprinkling it with holy-water in order to purify it, along with the other three substances which are scattered by the bishop, as is mentioned in the preceding law. This is symbolical of two things which are a part of all true Penance; first, that the sinner may voluntarily cast away the sin in which he was, and have no desire to commit it, for this is meant when they remove the bodies of the aforesaid dead persons from the church; second, because he should mourn and weep for the sin which he has committed; and in order to make it understood that these things should be done, they sprinkle this holy-water with ashes, salt, and wine, all mingled together, through the church. The water means that the sinner should mourn and weep. The ashes that he should stand in fear of God, and this fear causes him who performs Penance to consider himself but as ashes; and, for this same reason, priests put them upon the heads of Christians the first day of Lent, and say to each one of them at the time; "Ashes thou art, and to ashes thou must return." By the wine, is understood the hope which every Christian should have of the mercy of God which rejoices the mind of the sinner, as wine gladdens the heart of man. They put salt into that water, along with the other things above mentioned, in order to make it understood that the sinner should be moderate in his sadness while grieving over his sins, but should not be so sad as to despair; and, on the other hand, that he should not have too much hope in the mercy of God for his grief to be mitigated, or trust so much in God's mercy as to venture to commit sin, thinking that he may be pardoned every time he desires to be. Wherefore, true repentance is accomplished by the above mentioned ceremonies, that is, where man mourns over the sins which he has committed and has no desire to commit others afterwards.

For all these reasons the Scriptures call the church a place of weeping, and Solomon said; "It is better to go into the house of mourning than into the house of feasting;" and this means that it is more profitable to go to the church where a man should weep for his sins, than to a place where the pleasures and the delights of the world are to be found.

LAW XVI.

Why the Church Is Called the House of Instruction.

Men learn by the good punishments of the church how to act well and to avoid doing evil, and for this reason it is called the "House of Instruction," and this agrees with what King Solomon said, through the Holy Spirit by the voice of the Church: "Remember friends, those of you who are not faithful, and those of you who have not learned this, to assemble at the house of instruction." The church is so called because two things are learned in it, namely, to believe, and to perform good works; and this is shown by the twelve tapers which are lighted, and by the letters which the bishop writes in the ashes scattered over the floor of the church through its length and breadth in the form of a cross, which is for the purpose of instruction. Belief is signified by the light of the tapers, as the Faith resembles a light, and because Our Lord Jesus Christ said in the Gospel: "While you have light believe in it, so you will be the children of light, by which God is meant;" and for the reason that a taper is composed of three things, wick, wax, and fire, the three Persons of the Trinity, Father, Son and Holy Spirit are understood: and three other things, namely, body, soul, and divinity, which exist in Jesus Christ, may thus be symbolized.

Wherefore, the twelve burning tapers which they place in the different parts of the church, indicate the twelve Apostles, who preached the Faith of Our Lord Jesus Christ over the whole earth, lighted the world, and ex-

plained true religion. Moreover, the church is called the House of Instruction and of Good Works; and this is symbolized by what the bishop writes on its floor, as above stated; the letters are Latin and Greek, and not Hebrew; and some of them are written in one direction, which corresponds with the length of the church, and others in another, which corresponds with its breadth, and this is done with the aforesaid letters to let those who enter the church understand that, while there, they should remember the commandments of God; and that each one should exert himself and act in those two places so as to prove that the said commandments are not to be observed according to the writings of the Hebrews, but according to the true understanding of Christians which they derive from the Catholic faith: and for the reason that the Latins and Greeks possess this faith more truly than others, those letters, and not others, are used.

LAW XVII.

For What Reason the Church Is Called the House of Shelter.

The church is called the House of Shelter and Repose, and, for this reason, King David said in a psalm of the Psalter: "That God was a house of shelter and repose," therefore during the consecration of a church they make two other symbols of the cross. They inclose the relics of the saints in the altar to let it be understood that, in the Church, Christians find protection through the power of Our Lord Jesus Christ, by means of the relics of the saints which are there: and the symbol of the cross is emblematic of the power of Jesus Christ which was, in the first place, as it were, concealed, and by means of which he protects and defends those that enter the Church, and therefore they place above the door, outside, the symbol of the cross and the representation of a lamb, and inscriptions which mean Peace. Moreover, the relics of the Saints, which are in the church, are placed there that, by virtue of God, they may shelter and defend those who resort to it. They place the representation of a white lamb over the doors of consecrated churches as a symbol of Our Lord Jesus Christ, who was as gentle as a lamb in suffering martyrdom for us, for the prophet Jeremiah said of him: "They led him as a sheep to the slaughter, and as a lamb before his shearers is dumb, so he opened not his mouth:" and they represent it as white because Our Lord Jesus Christ was without any stain of sin: and for this reason God ordered Moses in the old law to command the Children of Israel to sacrifice a lamb which was entirely white, and to mark the doors of the houses where they dwelt with its blood, and the destroying angel would not enter there: and therefore they employ the sign of the cross as a symbol of that other one made over the door, for, by means of it, we are protected from the power of the devil, who is the destroying angel. And the inscriptions which they place there, and which read Peace, show that by keeping the commandments of Our Lord Jesus Christ, as the Holy Church directs, we shall have peace in this world, and rest in the other, forever, for he said to his disciples: "My Peace I leave with you, and My Peace I give unto you."

LAW XVIII.

Why the Church Is Called the House of Prayer.

Christians should pray to, and implore God in every place, and especially in the church, although they are at liberty to do so in other places when they cannot go to the church, and for this reason it is called the House of Prayer. This name Our Lord Jesus Christ gave it when he said in the Gospel: "My house shall be called the house of prayer:" and therefore they perform two other ceremonies while consecrating a church, they burn incense, and anoint

it with chrism and with holy oil. By the use of incense, prayers are understood, and, for this reason, the prophet David said in the Psalms: "Lord God, direct my prayer, that it may ascend before Thee as incense ascends." By the Unction is understood the good will which man should have during his prayers, for the prayer which a man makes without devotion and good will is like coals which are extinguished; and for this reason St. Augustine said: "As the sound of a voice, which has no meaning is like the cry of a bird which does not understand what it says; so a prayer which is not made with devotion is like the roar of an ox when he bellows."

LAW XIX.

For What Reason a Church, Which Has Already Been Consecrated, Can Be Reconsecrated.

Where a church, or the greater part of it, has been burned, it can be consecrated, although this had been previously done. This is also the case where it has been entirely demolished from the foundation, and rebuilt: or where the outside walls, or the greater portion of them, have been entirely removed: or where any doubt exists that it had been consecrated, so that this cannot be proved by witnesses, or by documents, or by any other reliable testimony. If a heretic bishop should consecrate it, not observing the form required by the Holy Church, it should be reconsecrated. Where any part of the old church remains, and they rebuild the walls and join them together, it should not be consecrated a second time. Moreover, it should not be reconsecrated where it is demolished little by little, and rebuilt at the same time: or where the entire roof is destroyed or burnt, and the walls remain sound; but it should be purified with holy water while mass is being said. Where the altar had been consecrated, and the communion table or any of the feet upon which it stands is destroyed; or where the altar is moved to another place, or any part of it is broken so that it is greatly defaced, it can be consecrated a second time. The altars which the bishop consecrates, however, can be removed and changed from one place to another, and it is not necessary for this reason to consecrate them anew: and, moreover, after a church has been consecrated, the priest should make a record on the day on which it is done, and every year make a festival of the anniversary of that consecration.

LAW XX.

For What Causes a Church Should Be Reconciled.

A church should be reconciled on account of two kinds of wickedness which men commit in it, and which defile it. The first is where one man wounds another in it, and blood is spilled. The second is when anyone commits adultery or fornication with a woman there. Wherefore, when either of these things is done in a church, mass should not be chanted, or the service conducted in it until the church is reconciled, which means purified from the evil done there and restored to its former condition, whether the act was public or concealed. Where the church has been consecrated, the bishop can reconcile it with holy water, which he himself or some other bishop has made, and it should contain wine and salt like that with which they consecrate churches; and this no other priest qualified to say mass has power to do. However, if it has not yet been consecrated, a priest qualified to say mass can reconcile it with holy water, in order that the service may not be delayed; and this he can do by order of the bishop. Moreover, when an excommunicated person has been buried in the cemetery, he must be removed from thence as soon as this is known, and the cemetery reconciled with the holy water with which the church is purified whenever this is necessary. A cemetery must be reconciled for the same reasons that a church should be.

TITLE XI.

On the Privileges and Exemptions Which Churches and Their Cemeteries Enjoy.

The churches of emperors, kings, and other lords of the land enjoy certain privileges and extraordinary exemptions, and there is good reason for this, as the houses of God should receive greater honor than those of men. Therefore, since in the preceding Title we showed how churches should be built, and in what way they should be repaired, whenever it is necessary, and, also, how they are consecrated; it is proper to speak in this Title of the exemptions and privileges which they, as well as their cemeteries, enjoy. In the first place, we shall explain what the word privilege means, and in what matters churches possess privileges. Also what men the church can protect, and what it cannot, when they take refuge in it; and to what penalty those who violate a right of this kind are liable; and in addition to all this we shall show what persons the justice of the ancient laws orders to be removed from a church.

LAW I.

What a Privilege Is, and in What Matters a Church Possesses It.

A privilege means a special law, made exclusively for the benefit or honor of certain men or places and not for those of all in common: and because a church is the house of God it is more honored than any other, as is stated in the preceding Title. For this reason it possesses more privileges than the houses of men, and especially in the following respects; no tax or any other contribution can be levied upon it; nor can any secular disputes be determined in it, or in its cemeteries, and this applies especially to sentences, because it would be contrary to reason, and cruel to condemn men to death or injury in a place established for the service of God, and the performance of works of piety and mercy. Moreover, no trade should be carried on within its walls nor should the dead be buried there—as is stated in the Title concerning tombs—nor should laymen remain with priests in the choir when the service, and particularly the mass, is said, and this is the case in order that they may the better say it without hindrance, and with greater devotion. Nor should laymen or women remain around the altar, or approach it while mass is being said; they can, however, remain in the other parts of the church, the men on one side, and the women on the other. Moreover, no woman can approach the altar, or assist the priest in any way whatever, while he is saying mass, or remain, during the service, in front of the steps of the altar. When, however, they are obliged to communicate, or pray, or make an offering, they may then approach the altar. No one can lodge in houses belonging to the churches, which are connected with them and are absolutely theirs, and where their property is kept. In addition to these exemptions the churches possess others, for they acquire the same control of, and title to such landed property as has been given them, sold to them, or legally devised to them by will, as he had who gave, or sold, or left it to them, even though they have not taken possession of said property, so that they can obtain it as their own from anyone who holds it: and this same privilege monasteries, hospitals, and other religious establishments erected for the service of God, enjoy.

LAW II.

What Men the Church Can Protect, and In What Way.

A church and its cemetery possess an exemption in other respects in addition to those which we have mentioned in the preceding law: for every man who takes refuge in them, on account of any offence which he has committed, or debt which he owes, or for any other cause whatsoever should be sheltered there, and should not be removed by force, or killed, or any corporal punishment whatever be inflicted upon him, nor should they surround him while in the church or the cemetery, or forbid that he be given food and drink.¹

It is understood that this protection should be afforded in the church, in its portals, and in its cemetery, except in the special instances mentioned in the third law following this: and where anyone is shut up there, the priests must give him food and drink, and protect him, as far as they are able, so that neither death nor bodily injury may be inflicted upon him: and those who desire to remove him from thence, in order to try him for offences which he has committed, must give security and sureties to the priests that they will not inflict any bodily harm upon him; or, where they cannot give them, they must swear to do this, if they are such men as it is thought will keep their oaths, and they can then remove the man from the church to answer for his act as the laws require; or, where he has not sufficient property with which to make reparation for the offence committed, to serve as long a time instead as the judge shall order and think proper, according to what is just. But he should not serve or be arrested by anyone on account of a debt which he has contracted, but he should give the best security he can that, when he comes in possession of any property, he will pay what he owes.

LAW III.

What the Law Is When the Slave of Any Person Takes Refuge in a Church.

Where the slave of any person, without the order of his master, takes refuge in a church, he should be sheltered there, as the preceding law states. But if his master should give sureties, and swear not to do him any injury, the priests must remove the slave from the church, even though he should not desire to leave it, and give him up to his master; and if the priests should not be willing to do this, his master can remove him, and take him away without being liable to any penalty. If, however, the priests should shelter the said slave after security has been given, they are bound to make reparation for the loss of service which his master sustained because they did not surrender him; and if he escapes, they should pay him his value.

When, however, a debtor enters a church through fear of a debt which he owes, and the person to whom he owes it is not willing to settle with him, but asks him more than he ought to pay, and threatens him, and through fear of this he takes refuge in the church; his creditor has no reason to demand him of the priests. If, peradventure, any of those who had given security by their oaths, should attack him, and do him some bodily harm, he who did so will be guilty of perjury, and the Holy Church commands that he be excommunicated for that reason.

¹ The right of asylum is one of unknown antiquity, and attached to all the principal shrines and temples of the Greeks. Fugitive slaves, criminals, and debtors were permitted, in like manner, to flee for protection to the statues of the gods. From Greece this privilege descended to Rome, without being enjoyed to the same extent, or being subject to the same abuse. The statues of the emperors, most of whom were deified, were often resorted to by slaves in distress; and the eagles of the legions, while in the field, also offered the right of sanctuary to soldiers fleeing from the oppression of their officers. This practice

LAW IV.

What Men Cannot Claim Protection in the Church.

Those who take refuge in a church should have protection and security, as the preceding law states. There are certain men who should not be sheltered there, and they can be removed without the parties who take them incurring any liability to punishment; as, for instance, notorious thieves, who frequent the highways and streets, and kill and rob people; and also those who wander about at night, burning, or destroying in some other way crops, vineyards, trees, and fields, as well as such as kill or wound persons in churches, or cemeteries, confident that they will be protected there, or such as burn or destroy churches. The Holy Church forbids any other persons, excepting these, to be harmed, as is above stated.

Anyone who violates this law commits sacrilege, and should be excommunicated from the Church, until he makes amends for his fault, because he did not show the Holy Church the respect which he should have done, and if he used violence upon a man or a woman, or upon any property in removing them from the church, he should return them there without injury, and without any loss.

LAW V.

What Men the Justice of the Ancient Laws Orders to Be Removed from the Church.

Men sometimes commit serious offenses, exclusive of those mentioned in the preceding law, and, fearing punishment, flee to the churches. Wherefore, the justice of the ancient laws declared that such persons could be removed without their captors being liable to any penalty; as, for instance, well-known traitors, those who kill others wrongfully, adulterers, those who ravish virgins, and those who are required to account to emperors and kings for their tributes and taxes collected; for it would not be reasonable that the church, which is the house of God where justice should be observed more perfectly than elsewhere, should protect such malefactors as these; and also because it would be contrary to what Our Lord Jesus Christ said on this subject, namely; that his house was called the house of prayer, and should not be made a den of thieves.

among the ancients was based rather upon custom and prescription, than expressly conferred by legislative enactment. The Civil Law, however, acknowledged the right which, in both classic and mediæval times, was one of the most zealously asserted prerogatives of the priesthood. Always tacitly admitted, like many of the other inheritances from paganism, after the fourth century it was formally incorporated among the established regulations of the Christian Church. The Civil Law forbade a party who had injured another to resort to the statues of the emperor for refuge. "*Ad statuas confugere vel imagines Principum in injuriam alterius prohibitum est.*" This privilege was, however, conceded to all other persons escaping from the custody or restraint of others. "*Si quis ex vinculis vel custodia, detentus a potentioribus, ad hujusmodi præsidium confugerit: his enim venia tribuenda est.*" (Dig. XLVIII-XIX-XXVIII-7.)

By the Visigothic Code a pursuer could not remove a fugitive from justice from a sacred edifice without the permission of a priest, and after an oath had been solemnly taken that the party sought was a criminal, and liable to suffer death. The priest could then drive him from the altar, and authorize his pursuer to arrest him. The consent of a priest was also necessary for the removal of a slave or a debtor from a church where he had sought sanctuary, and those who violated this law were liable to be fined or scourged. No one had a right to remove by force anyone who had taken refuge in a church unless the latter attempted to defend himself by arms, and if he did so, and was killed, the homicide was declared to be justifiable. Where a debtor sought asylum in this way the priest was compelled to surrender him, and his creditor was not bound to make oath, or even to promise, that he would not subject him to violence. (Forum Judicum VI-V. 16. IX. III. 1, 2, 3, 4.)

The privilege of sanctuary was recognized by the Common Law of England in all matters excepting those of treason and sacrilege; and if, within forty days after the commission of the offence, the accused party went clothed in sackcloth before the coroner, acknowledged his guilt, and took an oath to abjure the realm, his life was saved, if he left the kingdom with all convenient speed. The privilege of sanctuary was finally abolished in England by the statute XXI, Jac. I. 28. I. VIII. 2.—Ed.

TITLE XII.

On Monasteries and Their Churches, and Other Religious Houses.

As men are terrified by the things of this world, the Holy Fathers considered that there was a way by which they could the more freely unite to obtain the love of God, and for this reason there were some of them who chose their dwelling places on uninhabited mountains, and others selected theirs near towns, but apart from them; and places such as these, of whatever kind they may be, are called monasteries or religious houses, because men occupy themselves there in pious devotions, and with a view always to serve God more than to do anything else. And, since in the preceding Title we spoke of the privileges and exemptions which churches enjoy, it is proper to speak here of other institutions which belong to religion, and to show what establishments are called religious; by whose order they should be erected; whom they should obey, and in what things. Also, after they are built, whether men can be removed from the service of said institutions, and use be made of them as of other buildings which are private property, and according to the rules of what religious order those who live in the above named establishments should live; and what rights persons belonging to monastic orders have in the churches which they hold.

LAW I.

What Establishments Are Called Religious, and by Whose Order They Should Be Erected.

Hermitages, monasteries, of various holy orders, churches, hospitals, asylums, and all other establishments where men especially perform the service of God, by whatever name they are known, are called religious houses; as well as oratories built in private residences with the consent of bishops. A distinction, however, exists between these above named institutions, for some are called religious and consecrated, as, for instance, those which are built with the permission of bishops, whether they are churches, monasteries, or other buildings set apart especially for the service of God: while the others are only designated religious, as, for instance, hospitals and asylums which men build to accommodate the poor, and such other structures as are founded in order that acts and works of piety may be performed in them.

LAW II.**Whom Religious Establishments Should Obey, and In What Matters.**

Monasteries and other religious establishments should obey the bishops in whose bishoprics they are situated, and especially in the following matters, namely: in the appointment of priests to the churches and chapels which are outside the monastery, and in their removal when they give cause for it in punishing malefactors; in arranging and consecrating churches and altars; in administering Unction, Penances, and other Sacraments, and in rendering judgment in such questions as they are called upon to decide. All the matters aforesaid are said to belong to the law of jurisdiction, which means such particular rights as should be conceded to, or done for, bishops in their respective bishoprics. With regard to other questions, relating to the diocesan law, which means the ordinary rights which the bishop is entitled to receive from the priests of his bishopric, and which are the following, viz.: to come when they are summoned to the synod; bury the dead; form a procession when the prelate is present; pay him a contribution of two half reals every year of the money in common circulation in the country, along with the third or fourth part of the bequests which men make to the clergy at their deaths, according to the custom of each locality; and also to give him the third or fourth part of the tithes or the visitation fees, and lodgings, which means his expenses: from all these things monasteries are exempt or free, except the fee they must pay when they are visited.

Where monasteries have parish churches attached to them, they are required to obey their bishop as well as in all matters concerning the diocesan law as in those of jurisdiction; unless the monastery with all its churches is exempt on account of some privilege granted them by the Pope. And although monasteries may not be subject to the bishops in matters relating to the diocesan law, as above stated; if, when they were first constructed, a condition was made that they should give them some particular thing, they are bound to comply with it. They must do this also, where there is, or had been, a custom in use for a long time to render them any special service.

LAW III.**Concerning Things Devoted to the Service of God Which Should Not Afterwards Be Returned to the Service of Men.**

Neither churches, monasteries, nor the other religious establishments mentioned in the second law of this Title, should be changed so that men can use them, as they do other things which they have power to sell, nor can such establishments be made use of in any other way. Wherefore, if a monastery should be injured, or fall into decay through the wickedness of its monks or that of any other men whomsoever, the bishop, or other superior whose duty it is to do so, should have the persons committing such acts expelled, and put other good persons of the same order in their places, and if he should not have any such under his control, he should send there good men of some other monastic order: and if there should be none of these, and he can not find any such, he can then place men belonging to the secular clergy in said monasteries; and those who are placed there for such a cause as this should profit by these establishments, and perform the service of God in them.

Where a monastery has been withdrawn from the power of the bishop on account of some privilege granted by the Pope, and the abbot or superior

of that locality gives obedience to the bishop without the consent of his convent, his monastery is not injured thereby, nor is its privilege abrogated for that reason: and even if this was done with the consent of his convent, it will not interfere with the Pope in any of those matters which he has reserved for himself. There is another case in which the obedience of an abbot or superior given to the bishop does not affect a monastery; and this is where a bishop was accustomed, for forty years or more, to require its obedience, and where, after this time has elapsed, the superior of that establishment acknowledges the authority of some other bishop, without the consent of his convent.

LAW IV.

Where Several Monasteries and Churches Are United Into One What Rule They Should Observe.

Union and combination can be made of two monasteries or of two churches, and this can be done in three ways. First, when a monastery places itself under the power of another, or when a church does the same. In such a case the one which is subject to the other should live under the rule, and make use of the privileges of the latter; and, referring to this, the Holy Fathers said that one church was dependent upon the other. The second way is, when two monasteries or two churches are united into one, so that one is not subordinated to the other but they are equal, just as are the monks or canons of both, and all the property which they possess is in common, and such as are united in this way are like a single church, or a single convent, and should live according to the rule and better customs of each of them: and where they belong to two bishops, each one should obey its own, and grant him those rights which it did before they were united, so that neither injury nor loss may result to their prelates. The third way is, when two churches or two monasteries are united into one in order to have but one prelate. In all other things, however, each of them must stand by itself, and live on its revenues, and separately, according to its rule. And for whichever of the above named reasons two churches or two monasteries are united into one, this should be done in every instance with the consent of their bishop, and not in any other way, unless by order of the Pope: and, moreover, when the bishop has this to do he should ask the advice of his chapter.

LAW V.

What Rights Members of Monastic Orders Obtain in the Churches Which They Own.

The Holy Church declares that monks and other members of religious orders have certain rights in their churches, and it divided them in the following manner, namely: where they build a church on their own ground and at their own expense, they are entitled to all temporal matters connected with it, and the bishop to those that are spiritual: they should recommend the priests who serve the church, and the bishop should give it to the parties, or party whom they recommend: the priests are required to render an account to the bishop of spiritual affairs and the abbot of temporal affairs: and where the bishop gives them the church they are then entitled to those rights in it which he especially conferred upon them by his donation, and where he gave it to them with all the rights which he had in it, without the reservation of anything, they are entitled to both its temporal and spiritual benefits; except where he retains the contribution due him, his visitation fee, and the right to

punish them for things in which they err. Those to whom he gives the church can appoint priests for it, and remove them when they give cause for the same; and where he gives them a church in the way stated in the sixth law of the Title which treats of its affairs, and does so in such a way that they cannot alienate it, in this instance they obtain the rights in it which this same law sets forth. Whenever a bishop desires to make any of the above-named donations, in order that it may be firm and lasting, he must make it with the consent of his chapter: and where its patron gives a church to any holy order, those to whom he gives it acquire only the right of its presentation, and nothing more.

TITLE XIII.

On Burials.

Certain men err very gravely, who believe that when the body of a man dies the soul also dies with it, and that everything is lost together: and this is the opinion of desperate persons, for they hold that man has no superiority over any other animal which God created in this world, nor should have any reward for the good he does here, nor any punishment for the evil which he commits: and such persons as these should not be considered men, but rather as worse than beasts; for, since, on account of his understanding, man is separated from all other animals, he who destroys him is worse than a beast. On this account King David said in the Psalter that: "When a man enjoys honor and does not understand it, he makes himself equal to the beasts, and acts like them." This honor is the intelligence which God bestows upon man, and by which he exalts him over all other creatures.

There are others who believe, in another way, that souls do not die, but that they are removed into other bodies, and those are very foolish who believe that the soul which leaves man when he dies can enter into anything else: and, in addition to this, they attempt to diminish the power of God, by thinking he cannot make as many souls as bodies in which to put them, and, for this reason, the understandings of people of this kind are worse than those of beasts.

There are others who believe, in another way, that the body will be raised along with the soul on the Day of Judgment, and that it will eat and drink after its resurrection: and although this error is not as great as the others above-named, for the reason that they believe in the resurrection, nevertheless, they err greatly, because they understand this in a corporeal sense, and not spiritually, as they should do. There are others who believe in the resurrection spiritually, and that there will be no eating or drinking after it takes place; but those persons err who believe that the good which men do, or order to be done, for the dead is of no benefit, but only the good which they did, or ordered to be done during their lives, is profitable.

The Catholic Faith of Our Lord Jesus Christ abolished all these errors, and declared that men should live in this world doing good, and possessing a certain hope that after they die they will rise in both body and soul, and be rewarded for the good which they have done, by knowing God and living spiritually in Paradise, and that those who did evil will go to eternal punishment: and that men might know how to avoid incurring these penalties, it prescribed for them certain ways in which to live, explaining to them the Articles of Faith, and administering to them the Sacraments of the Holy Church, that they might have pardon for their sins, and salvation after death: and it decreed that not only the good which they did during their lives should profit their souls, but also what others did for them after their deaths. Wherefore, since Christians had, and still have, a regularly prescribed mode of life directing in what way they should live, and also have the true belief as to how those should be resurrected and saved who have acted properly; it was, for this reason, decreed by the Holy Fathers that their bodies should have sepulture near churches, and not in places which were uninhabited and distant from them, being buried in fields like beasts.

Since in the preceding Title we treated of churches and their privileges, and also of religious establishments; it is proper that we speak of cemeteries,

and of tombs collected near churches. We shall show, in the first place, what burial is; whence it derived its name; what rights should be observed in giving it; and for what reason the Holy Fathers deemed it proper that graves should be situated near churches. We shall also show whose duty it is to bury the dead; what persons should be buried in churches, and what persons should not; and also what punishment those should suffer who break open graves, and plunder the dead.

LAW I.

What a Grave Is, Whence It Derived Its Name, and What Rights Should Be Observed in Giving Burial.

A grave is a spot marked out in the cemetery for the burial of the body of a dead man. The word sepulchre took its name from the word *sepelio*, which means to put under ground. In giving burial, four things should be observed. The first is, the service which priests say over the dead; and this should not be sold in any way, nor should priests ask compensation for it, but if persons desire, of their own accord, to give them anything, they may accept it. The second relates to places where burials can be made, by which cemeteries are understood, and, moreover, the spot in them where anyone is to be buried cannot be sold, even though no one is buried there. The third relates to the sepulchre, of whatever material it may be composed; and this any person who owns it is at liberty to sell, provided no one has ever been buried in it. The fourth relates to ground purchased or donated for the purpose of a cemetery; and the Holy Church commands that, even though it is granted for that purpose, no one can be buried in it, except the person or persons to whom it formerly belonged. What this law says concerning graves, namely that they cannot be sold, is because anyone who sells them commits the sin of simony; for when temporal affairs are united with those that are spiritual they are merged in the latter, as spiritual things are more noble than those that are temporal; and for this reason no one can sell burial places without being guilty of the sin of simony.

LAW II.

For What Reasons Interments Should Be Made Near Churches.

The Holy Fathers deemed it proper that the interments of Christians should be made near churches, and this was for four reasons. The first is, as the belief of Christians is more closely associated with God than that of other people, so their graves should be nearer the churches. The second is, that when persons come to the churches, and see the graves of their relations or friends, they may remember to pray to God for them. The third is, that they may recommend them to the saints in whose honor and name the churches were founded, that they may pray God especially for those who are buried in the cemeteries. The fourth reason is, because devils have not power to approach so nearly the bodies of dead men buried in the cemeteries, as those of others who are outside; and therefore cemeteries are called places of shelter for the dead. In former times, however, Christian emperors and kings promulgated decrees and laws, and ordered churches and cemeteries in which the dead were buried to be located outside of cities and towns, in order that the stench arising from them might not corrupt the air, or kill the living.

LAW III.**To Whom the Right of Burying the Dead Belongs.**

The Holy Church speaks in two ways of those to whom the right of burying the dead belongs. One of these refers to churches which have cemeteries by permission of the bishops and the priests who serve them, and a right of this kind does not belong to laymen, or to other priests unless they act with the consent of the former: and where it happens that no priest attached to the church in which the dead person is to be buried is present, or has delegated his power to some one else in his stead, in an instance of this kind another priest can bury him, and where there is no other priest, laymen are authorized to do so; but they should not put on vestments or repeat the service, as priests do. Nevertheless, if the church is suspended, or the locality under interdict, they cannot do this; and if laymen, in contempt of this regulation, should violate it, the prelates can excommunicate them until they make proper amends; and where a complaint of this kind is made to the king, or to some other lord of the land, he can inflict punishment for the offence.

The other case is one which concerns every man in whose house anyone dies, for persons should bury their relatives, and honor them in their burial, and friends should bury their friends, and Christians one another. Every one should be buried in his own burial plot, if he has one, or in that which his relatives or friends give him, or in one that the priests own, which they have the power to give, or in one recently set apart; and no person should be buried in the grave of another, but if this should happen to be done, the body should not be removed from it unless by order of the bishop; and if it is removed in any other way, the person who caused the burial to be made, or the dead man's heir, can bring an action against the party on account of the dishonor he has caused; and he is bound to make reparation for it, according to the decision of the judge of that district. The owner of the grave or tomb can demand that the body be removed from it, or that its value be paid him, if it was where no one had previously been buried.

LAW IV.**Whence the Name Cemetery Is Derived, Who Should Define Its Limits, and How Large It Should Be.**

The word cemetery takes its name from *Cimiterio*, which means a place where the dead are buried, and their bodies reduced to ashes. The bishops must establish the boundaries of the cemeteries of such churches as they deem proper should be places of burial; so that conventual churches may each have ground measuring forty paces in every direction for a cemetery, and parish churches, ground measuring thirty paces. This, however, should be understood in this way, namely: that they should be located in such places that castles or houses situated very near, should not interfere with them: and that the bishop should establish the landmarks for the cemetery, according to the above stated dimensions, when he consecrates the church; if there is no impediment which prevents him from doing so. And for the reason that some persons doubt how the paces should be measured in order to define the limits of the cemetery, the Holy Church decides in this way, namely: that a pace shall be equal to five times the length of the foot of a man of average size, and each foot be equal to fifteen fingers breadth.

LAW V.**In What Churches Each Person Should Be Buried.**

Every man should be buried in the cemetery of the church of which he was a parishioner, where he heard the service while he was living, and where he received the Sacraments. If, however, any one should desire to have burial in another cemetery, as, for instance, in that of a cathedral church, or in that of any church where his ancestors are buried, or in any other cemetery whatever, he can do so; unless he does this to flatter some one, that they may fraudulently bury him in their church, or is influenced by some grudge which he entertains against the priests of the church where he was a parishioner, or through contempt of them, or where he does not leave anything to his church: for where anyone acts contrary to these regulations, and causes himself to be buried in some other cemetery, doing so on account of any of the four above mentioned reasons the priests of the church where he was a parishioner can demand his body, together with all the dues which were expended for him on account of his burial. If he should choose to be buried in some other cemetery, not doing this on account of any of the four above named reasons, and leaves any property to the church where he was a parishioner, it should, in addition to this, have the third, or the fourth, or the half of what he left to the church where he chose to be buried, as well as of whatever he left to other churches, or monasteries, or to religious orders of any kind; the amount of the same to be determined by the practice in that bishopric, or by that of the country where he lived. Where no certain custom was in existence in that country governing how much the church should receive, it should have the fourth part of the bequest; and no one can avoid giving it by alleging that it is not customary to give anything for this reason.

There are other churches which have no right to receive the dead for the purpose of giving them burial; as, for instance, private chapels which men erect in their homes, and those of the religious orders, as well as such as are located in castles, or within their narrow limits; for the reason that bishops have not granted them places for cemeteries, for in localities such as these no one should be buried, unless it is done by order of the bishop. Where anyone violates this regulation, and directs that he shall be buried in any of such places, the bishop, or any other prelate whom it concerns, has a right to demand the body of the deceased, and have it removed from that grave, and buried in the cemetery of the church where he was a parishioner, and from which he was accustomed to receive the Sacraments of the Holy Church in his lifetime, and that all the other things which were received on account of his burial be surrendered along with his body.

LAW VI.**What Rights Priests Can Require of Such of Their Parishioners as Die Intestate.**

Where anyone dies without the power of speech, so that he cannot make a will, the church of which he was a parishioner has no right to claim any of his property, unless it should be a custom of that country to claim something. If, however, the relatives of the deceased should choose to bury him in some other church and donate some property to it at the same time and they did not do so for any of the four reasons mentioned in the preceding law, the church of which he had been a parishioner has a right to demand its share. But where they do this for any of the above named reasons, the church can claim the body of the deceased, together with all the property donated with

it; just as if the party himself, in his lifetime, had selected his grave in some other cemetery, doing so for any of the four reasons above stated. Moreover, a parish church should not claim any part of the property which its parishioners bequeathed in his will to different persons, nor any of the arms or horses which he left for the service of the Holy House of Jerusalem, or of any of the property bequeathed for the construction or ornamentation of churches, as, for instance, books, chalices, vestments, crosses, bells, lamps, and other things of this kind, which are devoted forever to the service of the Church. Nor is it entitled to any of the property bequeathed to another church for the commemoration of any yearly mass, or for masses to be said for thirty days, or for seven days; nor to any property left through charity for the use of hospitals, bridges, or the poor. This should be understood in this way, namely: that where any one makes such bequests, he does not do so fraudulently, to the prejudice of his bishop and the priests of the church where he was a parishioner. Moreover, when anyone of sane mind enters a religious order, and takes any of his property, the church of which he was a parishioner has no right to claim any of that which he took with him. If, however, he should enter such an order while ill, and should die of that illness, the church of which he was a parishioner should have its share, as stated in the preceding law.

LAW VII.

What Churches Do Not Suffer in Their Rights, When Their Parishioners Are Buried in Monasteries, or Where They Were Familiars.

Those who assume the habit of any order, and dwell in its house, being still masters of their property, and not relinquishing it, are called familiars, or members of the brotherhood. And although persons of this kind may direct that they be buried in those monasteries to which they betake themselves, the priests of the churches where they were parishioners should not, for that reason, lose their rights in the property which they bequeath; but should have their share, as stated in the third preceding law. Moreover, when it happens that a stranger dies in a place where there is not a proper burial ground, and where the church of which he was a parishioner is not situated, such a person should be buried in the church to which he in whose house he dies belongs, or in the principal church of the town or locality where he died. The same thing should be done, where a robber or malefactor is sentenced to death, or taken prisoner to be executed, for, if he confesses, he should be buried in the cemetery of some church, even though he has been executed, and the church must administer communion to him, if he asks it. This also should be done where he did not confess, provided he was willing to do so, and there was no one to receive his confession; and this should be understood to be the case where he made signs before he died that he wished to confess, but did not have time to do so.

LAW VIII.

What Persons the Holy Church Forbids to Receive Burial.

The Holy Church prohibits and forbids certain persons from being buried in its cemeteries: and these are Moors, Jews, heretics, and all others who are not members of our religion. And not only is burial forbidden to such people as these, but also to Christians who die excommunicated with the greater excommunication, and even to those under the lesser, if it is such as

men have knowingly incurred by treating it with contempt, and associating with persons under the greater excommunication, as is stated in the Title which treats of the sentences of excommunication.

Where any of the above-named persons have been buried in a cemetery or a church among true Christians, because it was not known that they were of such a character; or where some powerful man caused this to be done, by employing force to have them buried, they should be disinterred, and removed as soon as this is known, and mass should not be chanted in the church in whose cemetery such persons were buried, nor should it be consecrated after this fact has become public, until the bodies have been removed from thence: for, since the church rejected them during their lives they should not be received by it after death. However, it should be understood that the bones of such persons have not been mingled with those of true Christians, so that they cannot be separated from them, for in that case this should not be done.

LAW IX.

Burials Should not Be Given to Public Usurers, Nor to Such as Knowingly Die in Mortal Sin.

Where any person in his lifetime was a notorious usurer, or where anyone knowingly dies in mortal sin, and either of these dies without repentance, not confessing his sin, he cannot be given burial by the Holy Church. For as the law forbids that the Sacraments of the Holy Church be administered to such a man during his life, where he does not repent of his sin, it is not just that he should be given burial among other Christians; but if, before he dies, he should show signs of repentance, and that he would confess if he was able to do so but could not on account of some impediment, as, for instance, an illness that deprived him of speech, by reason of which he was unable to act or talk, or because no one was at hand to whom he could confess; under circumstances of this kind he should not be deprived of burial: for those whom the Holy Church receives during their lives, through their confessing their sins, or manifesting a desire to do so, should not be rejected after death.

LAW X.

Those Who Die Fighting in Tournaments, or Are Robbers or Murderers, Should Not Be Buried in Cemeteries.

A tournament is a kind of practice in arms which knights and others engage in in certain localities, and it occasionally happens that some of them are killed; and for the reason that the Holy Church understood that there arise from this source many dangers and injuries to their bodies as well as to their souls, it forbade their burial. In order the better to abolish these pastimes it imposed as a penalty that those who took part in a tournament and died there, should not be buried in a cemetery with other true Christians, even though they should confess, and receive the body of Our Lord; and she commanded this in order that men might take warning by those whom they saw buried in the fields, and avoid doing the same thing. Moreover, she ordained that a similar penalty should be imposed on robbers, who, while in health, were unwilling to confess and make reparation for the offences which they had committed; and decreed that although they may have confessed when at the point of death, but could not give security to make reparation for what they had stolen, priests should not be present at their burial; but she did not deprive them of the right of sepulture in cemeteries. If, however, their parents

or friends should make reparation for the robbery which they had committed, the priest should not fail to bury them.

If any priest should receive for burial by his church, any of the persons to whom this is prohibited by the laws of this Title, or anyone else should bury such a person in the cemetery of a church under suspension, its prelate can suspend said priest from his office and his benefice, until he makes amends for the fault which he has committed.

LAW XI.

Only Certain Persons Should Be Buried Inside of a Church.

No one can be buried inside of a church except certain persons mentioned in this law; as, for instance, kings, queens, and their children; bishops, priors, masters, and commanders, who are prelates of their orders and of conventual churches; nobles, and eminent men who have built churches or monasteries, and selected burial places in them; and every man, whether ecclesiastic or layman, who deserves it by reason of the holiness of his life, or on account of his good works. If any other person, excepting those mentioned in this law, should be buried inside of a church, the bishop must order him to be removed from it; as well as the persons mentioned in the preceding law who should be disinterred from cemeteries; and such as these should be removed from thence by order of the bishop, and not in any other way. This should also be observed when it is desired to remove a body from one church to another, or from one cemetery to another. But where any one is buried in any place, not permanently, but with the intention of removing his body elsewhere; a person like this can be disinterred for removal without an order from the bishop.

LAW XII.

Concerning the Expenses Which Men Incur on Account of the Dead; What They Have a Right to Recover, and What They Have Not, and What Should Be Observed While Incurring Such Expenses.

Men incur expenses in many ways in the burial of the dead, for they do this in purchasing monuments, and in building them, in carrying the bodies to burial and especially when the parties die at a distance from their homes, and have to be transported there and in watching them night and day, when they cannot be speedily buried; as well as for tapers, shrouds, and all other expenses made on account of the body before it is interred, and whoever incurs said expenses, and says that he does so for the sake of piety and for the love of God, is not entitled to recover them. But where he incurs these expenses with the intention of collecting them, he should have them, although no one has directed him to incur them; and even if he has been told not to do so, nevertheless, he should be given a part of the property of the deceased before any bequests which the latter made in his will, or any of the debts which he owed—no matter under what circumstances he owed them—are paid, and before his heirs divide any of his property to which they are entitled: provided only, that the said expenses are moderate in amount, considering the person for whom they were contracted. Moreover, the Holy Church deemed it proper that where anyone died, and there was no one to provide the expenses of his burial, the judge should do this, or order it to be done, if the deceased had any property out of which said expenses could be paid. If, however, any personal property should be found, the expenses should be paid out of that,

and not out of the real estate; and the judge has the power to make the purchaser secure in his title to any of the property of the deceased sold for this purpose.

LAW XIII.

For What Reasons Precious Ornaments Should Not Be Buried With the Dead.

Rich garments, or precious ornaments like those of gold or silver, should not be buried with the dead, except in the case of certain persons; as, for instance, a king, a queen, or one of their children; or some other distinguished man; or a knight who is buried according to the custom of the country; or a bishop, or a priest who should be buried in the vestments which belong to him, according to the order of which he is a member. The Holy Church made this prohibition for three reasons: first, because it is of no benefit to the deceased either in this world or in the next; second, because it causes injury to the living, for they lose those valuable objects when they are deposited in a place from which they cannot be removed; third, because wicked men, through their desire to obtain the ornaments deposited there, break open the tombs and disinter the dead.

LAW XIV.

What Penalty Those Persons Deserve Who Break Open Tombs, and Disinter the Dead.

Those who break open sepulchres and disinter the dead, in order to carry away what is placed with them when they are buried, and to cause dishonor to their relatives, are guilty of manifest wickedness; and, for this reason, the Holy Church deemed it proper that when anyone does this knowingly and maliciously, the relatives of the deceased should have a claim against him, not only those who are his heirs but others: and they should present said claim in the following way before a judge, by estimating the damage that this dishonor to the grave of their relative had caused them; and the judge should consider who the person is who is sued for damages, as well as who the deceased was who was dishonored; and, where a large sum is claimed, having duly considered these things, he should make an estimate according to his judgment, and order the party who brings suit to swear that he would not have been willing to have the tomb dishonored for a sum equal to that which he has estimated as compensation. The judge should take care that he does not estimate the damage under a hundred maravedis, and the party who brought the suit shall receive this amount, if he were only one person, but where many present a claim of this kind, the judge must make a selection of one of them whom he sees is most interested in the matter, that he may represent them all. Each one should then have his share, but none of them shall be required to pay any part of said sum to any persons to whom the deceased was indebted during his lifetime.

A penalty of this kind is not imposed on account of the property of the deceased, but as a hindrance to the commission of an evil deed, and to make reparation to his relations for the dishonor which they have sustained, as well as to others in whose neighborhood he was buried.

LAW XV.**Deceased Persons Should Not Be Excluded From, or Forbidden Burial, on Account of Any Debts They Owe.**

No deceased person should be excluded from, or forbidden burial, because of any debts he owes; and nothing should be taken by force from the property of the deceased, on account of debts which he has contracted, or for any other reason. Nor can his heirs, or any person of his family, be brought into court until nine days after his burial; but, where nine days have expired, they can be legally summoned concerning the debts of the deceased. Where, however, they are suspected of concealing property, or of wasting it, or of conveying it out of the country, in order that their creditors may lose their claims, they should give sureties before the judge that they will not hide or waste the property; and, if any one violate this law, he shall lose the claim which he has against the deceased, and return all that he had forcibly taken. If it should be ascertained with certainty that the deceased did not owe anything, the person who did this must return to his heirs as much as he took from them on this account, along with an equal amount of his own property.

TITLE XIV.

On Property of the Church Which Should Not Be Alienated.

Emperors, kings, and other great lords, whose duty it is to watch over people and countries should be alert, and careful not to permit property in their dominions to be alienated without reason. And if they should act in this way concerning the possessions of every individual, how much more should they do so with regard to those of the churches, which are houses of prayer, and places where God should be served and praised. The property of establishments like these should not be wasted, for the reason that they may be impoverished, and be compelled to suffer loss on this account in the service of God which must be conducted in them. Wherefore, since in the preceding Title we treated of cemeteries, churches, and tombs, it is proper that we should treat in this of other property belonging to the churches, and whether it can be given away or alienated, or not. We shall explain, in the first place, what alienation is; for what reasons the property of the church can be alienated; who has the power to do this, and in what way it can be done; and also what punishment those who alienate it maliciously should suffer, as well as to what penalty those who receive it are liable.

LAW I.

What Alienation Is, and for What Reasons the Property of a Church Can Be Alienated.

Alienation is any contract or act which men enter into, or perform among themselves, by which the ownership of property passes from one person to another. This transfer is made in many ways, as, for instance, by gift, exchange, or sale; whether it is made without restrictions, or under certain conditions, or in another way called, in Greek, *Emphyteusis*, which means a transfer made in the same manner as a sale, as will be shown hereafter. The property of a church should not be alienated except for the following special reasons. First, on account of some important debt which the church owes, which it cannot discharge in any other way. Second, to liberate its parishioners from captivity, where they have not property with which to liberate themselves. Third, to give food to the poor in time of famine. Fourth, to build the church. Fifth, to purchase property near at hand to increase the size of a cemetery. Sixth, for the benefit of the church, where something which was not good was sold or exchanged in order to purchase what is better.

For any of these six reasons the property of a church can be alienated, and in no other way, unless it has some real estate which is not profitable: for property of this kind can be transferred to any person for a certain space of time, in return for a consideration paid for it, as above stated; although no other urgent necessity may exist, why this should be done for any of the six above-named reasons.

LAW II.

Who Has Authority to Alienate Church Property, and in What Way This Should Be Done.

Prelates have the power to alienate the property of their churches for any of the six reasons stated in the preceding law. But it is understood that this

should be done with the consent of their chapters, and that they should do it in the following way. For instance, where the church has personal property which comes under the above-named conditions, it should be sold before real estate; and with regard to chattels, such as are not sacred should be sold before those that are; and if it should become necessary to sell holy objects, such as chalices, crosses, and vestments of any kind, they should be sold to some church which desires to purchase them, rather than to any man: and where a church buys them they can be sold for the purpose for which they are made, but if they are sold to an individual, and are of metal, they should be melted before they are delivered to him. Where movable property is not sufficient for the purpose, then real estate of this kind can be sold, and that which is of least value should first be disposed of.

Although prelates can sell, or convey the property of the church for any of the above named reasons, yet lands which emperors, kings, or their wives have given to churches cannot be alienated in any way whatsoever.

LAW III.

How the Transfer Called *Emphyteusis* Is Made.

Emphyteusis is a kind of transfer which we mentioned in the third law preceding this, and is of such a nature that it cannot properly be called a sale or lease, although it resembles both of these. It is a transfer which relates to real, and not to personal property, and is made with the consent both of the owner and of the person who receives it, in the following manner, namely: he who receives it must, at the time, pay the other cash, or give him certain property agreed upon between them which takes the place of the price, and the title to which vests absolutely in him who receives it; and the owner of the land must place the other party in possession of it, under the condition that each year he pay him money, or give him something else upon which they are agreed. A transfer of this kind can be made forever, or for a specified time, and should be made in writing by a public notary, or by the owner who transfers it; and after this is done, the contract cannot be cancelled by the owner so long as he who bound himself to do so pays to him who holds the property what he obligated himself to do. And if any person should hold any property belonging to the Church under *Emphyteusis*, and for the space of two years, or a little more, should not pay what he promised annually, the prelate who has charge of the business of the church can deprive him of this property, without any further proceedings.

Where, in a case of this kind, a contest arises, for the reason that but little time over the two years aforesaid has elapsed, the matter should be decided by the judge of that district. Such real property can be transferred by *Emphyteusis* when the bishop, or the chapter sees that more benefit will result to the church by transferring, than by holding it.¹

¹ The peculiar tenure by which lands were held under the *emphyteusis* was established under the Empire, and grew out of the necessity of obtaining tenants who would improve and cultivate the vast tracts belonging to the State, which, being practically abandoned, were fast lapsing into the condition of a primeval wilderness. It was originally the practice to partition all territory obtained from conquered enemies among the soldiers, in consideration of their clearing it, and paying a stipulated annual rent. Such lands were called *agri emphyteutici* and were leased for a specified term of years or in perpetuity. They were not sold to the occupants because many of them were situated at a great distance from Rome, and citizenship being essential to the holding of real property in fee simple, persons in the enjoyment of that privilege could not be induced to take up their residence as farmers in localities far remote from the capital, and often amidst fierce and unruly barbarians. The soldiers therefore transferred their interest, so far as was possible under the laws, to residents of the provinces where their allotments were situated. The terms under which the *emphyteusis* was granted varied greatly with respect to the grantor and grantees, the rent, the labor to be performed, and the duration of the lease.

Lands already cleared and under cultivation were styled *vectigales*, and were in *perpetuum* so long as the rent was paid; others held under this tenure were *emphyteutici*. "*Non vectigales sunt, qui ita colendi dantur, ut privatim agros nostros colendos dare solemus.*" (Corp. Jur. Civ. Dig. VI-III-1.)

These tenants or *coloni*, as they were known, were practically serfs attached to the glebe, and resem-

LAW IV.

What Donations of Property Belonging to the Church a Bishop Can Make.

A bishop, or any other prelate of his church, should improve its affairs, as far as he can do so with justice, but he has no authority to pledge or alienate its property. And this is the case because he is not its owner, but is, as it were, a steward, to take care of, and protect its property, and for this reason he cannot make donations or sales which would result in great loss to his church; and, if he should do so, they ought to be cancelled, although they were made with the approval of his chapter, unless they were made for the reasons mentioned in the second law of this Title. There are donations, however, which a bishop can make without the consent of his chapter, and they are the following, namely: where he desires to build a new monastery in his bishopric, in which case he can give the fiftieth part of his income. But where there is another secular church, and it is desired to change it to one of a religious order, or where, it being a secular church, he desires to make it greater and more honorable in order to erect his tomb in it, he can give the hundredth part of his income; provided he does this with deliberation, and is moderate in making this donation to the monastery or church, that it may be assisted thereby in a reasonable way, and his own property not be greatly diminished on that account, for if it should be, the donation can be cancelled: and he can make whichever he pleases of these donations, where it does not result in great injury to his church, but he cannot give more than this, unless he does so with the consent of the Pope. Where a bishop makes many donations, giving very little property in each instance, and altogether they amount to more than the fiftieth or hundredth part, all in excess of either should be returned to the church from whence it was obtained.

LAW V.

In What Cases Donations Made of Church Property Are Valid.

The donations which bishops make of the property of their churches will be durable and secure in another instance, that is, where they have property of their own and give the same amount of it to the churches as they took from them to give to others. When they make such donations they should do so with the consent of their chapters; for otherwise, they will not be valid, unless they were made during the life of the donor, or where they consisted of unimportant things of little value, so that the affairs of the church do not suffer loss for that reason, or where the order of the Pope has been obtained to make the donations. And as bishops have no authority to make donations or other alienations of the property of their churches without the consent of their chapters, so neither abbots, prelates, nor priests of other parish churches which belong to bishoprics, can do these things without the consent of the bishops; and, if they should do them, they will not be valid, and the bishops

bled the villains regardant of mediaeval Europe. Their condition was but little better than that of slaves, they could be pursued, claimed, punished, and even put to death by the landlord. While nominally free-men, their status was in fact worse than that of those born in servitude, for they could not be emancipated; they had the right to marry, but children born to them, like themselves, could not be separated from the soil; and where the issue was derived from a mixed source the servile rule, "*partus sequitur ventrem*," applied.

After a *colonus* had lived for thirty years on the property he was entitled to its ownership, but, while released from other obligations, he could not abandon the land: "*Non autem habens facultatem terra derelicta in alia loca migrare.*" (Corp. Jur. Civ. Cod. XI-XLVII.23.)

The *emphyteusis* was not, strictly speaking, a lease, but a peculiar kind of real contract the responsibility for whose observance rested almost entirely on the grantee. It was absolutely essential to its validity that it be in writing. The removal, or extinction of its object released the grantee from liability. Eminent lawyers have detected in the conditions prescribed by the *emphyteusis* the germ of feudalism, whose laws certainly present in many respects a striking analogy to the rules under which this ancient tenure was instituted and maintained.—Ed.

can cancel them. Nevertheless, if the bishop should give his permission afterwards, the act will be as valid as if he had done so in the first place. This also would be the case with regard to what the bishop does where the chapter grants its consent subsequently.

A bishop cannot give the property of one church to another without the consent of the priest where said property is situated, except where both churches belong to the same bishopric; nor, moreover, can he cause their landed property to be exchanged, if the priests of both churches should not be willing to have it done.

LAW VI.

What Rights Monasteries Gain in the Donations of Churches Which Bishops Make.

Where he who has the right of presentation to any church consents that the bishop of that diocese should give the said church to some monastery, stating in the donation that he gives that particular church; it is understood that the monastery gains the right of presentation, since the donation was made with the consent of him who had that right. And it gains also the share which the bishop collected from the revenues of that church, although he may not mention this in the letter of donation. But if he did not receive any part of its income, it is understood that he gives the church to it with all its revenues, excepting four things, which belong to him, and are the following, namely: the contribution due him, the right of visitation, the right to inflict punishment and to reform such matters as require punishment and correction, and the right to receive his fee for visitation. These things belong to the bishop, although he may make the donation in general terms, unless he should especially relinquish them with the permission of the Pope.

It is understood by what is stated in this law, namely, that the bishop can donate the church, that he can do so when it is vacant, or when it has no priest for service, or who has any share in its control; for where there is one, and he opposes this, the bishop cannot donate the church because of the injury and loss which, on that account, will result to the said priest.

LAW VII.

How Bishops Can Enfranchise Slaves, and What Donations They Can Make Without Permission of Their Chapters.

No bishop, or any other prelate, has a right to enfranchise a slave belonging to his church, and where it happens that anyone desires to do this, it should be done in the following way, namely: by giving two other slaves in exchange for the one he wishes to set free, provided each of them is worth as much as the other slave, and has an equal amount of property of his own; and this should be done in writing, in the presence of his convent, or of the chapter where he is bishop or prelate, and the superiors of that locality should write their names in the document in order that this exchange may be firm and durable.

He has, however, in some instances, the power to grant permission for others to give away property, where the church derives no benefit whatever from it. This is the case where it is the custom in that country for bishops and other prelates to make such donations, provided this custom was not contrary to the ordinances of the Holy Church, or that the churches did not sustain losses by reason of it; and if neither of these impediments existed, the donation made by the bishop would be valid. This also should be observed,

not only in bishoprics but also in abbeys, and by prelates who govern the church. Where a layman, through a special favor of the Pope who has given him authority to always receive them, collects tithes, and desires to transfer this right to any other church or monastery, and the bishop in whose jurisdiction the property is situated, grants him permission; the donation will be valid, even though the chapter does not consent to it.

LAW VIII.

The Donation Which a Bishop Makes Without the Consent of His Chapter Is Not Valid; and in What Way a Donation Is Gained or Lost by Lapse of Time, When the Possessor Acts in Good, or Bad Faith.

Where a bishop, or other prelate, makes a donation of the property of his church to any person without the consent of his chapter, except as stated in the preceding law, such donation will not be valid: and he who receives such a donation, if he knew that the bishop had not power to make it absolutely, and without the consent of his chapter, whenever the church makes a demand for said property, is bound to return it, and cannot protect himself in its possession by lapse of any time, no matter how much had passed while he was in possession of the same; and this is the case because he did not hold it in good faith. But if he to whom the donation was made should contend that the bishop had authority to give it to him, and that he had had it in his possession for forty years, and that no one had claimed it of him in court during that time; he can thenceforth protect himself by such a defense, and will not be required to account for said property to the church, nor to any person making a claim for it; as is stated in the Title which treats of property gained, or lost through lapse of time.

LAW IX.

What Things a Bishop Should Do with the Consent of His Chapter.

Every prelate should consult with his chapter, in every thing he desires to do, or decree, concerning his church; as, for instance, where he has to confirm abbots or abbesses, or other prelates subject to his jurisdiction. And not only should he take the advice of his chapter in the above-named matters, but also in many others; as, for instance, when he desires to confer any special privilege upon any persons of his bishopric, and grant dispensations to others, where he has the power to do so. Also, when he desires to grant benefices, or make other presentations, as stated in the Title which treats of the benefices of priests; and where he wishes to deprive a priest of his benefice, he having done something on account of which he deserves to lose it. Moreover, when he intends to confer Holy Orders, he should, in the first place, discuss the matter with his chapter, or where it happens that he has to move a monastery from one place to another; or select a master for a school in a cathedral church, or in any other church of his bishopric, where he has authority to do so. He should also do this whenever he has to hear complaints of an important and serious character, and render judgment concerning them: as well as such as involve an accusation made against any person in order to bring him to punishment on account of some offense which he has committed. Also, where an important claim for property—whether it consists of chapels or real estate—is made by one man against another: in these, and all other things which every prelate has to do and decide in matters relating to his church, he should act with the consent and advice of his chapter.

LAW X.

How the Acts of a Bishop, Made with the Consent of His Entire Chapter, or with That of a Part of It, Are Valid.

A bishop should have the consent of his chapter when he desires to alienate any of the property of his church: and because at times disagreements arise in the chapter, some giving their consent, while others do not, the Holy Church deemed it advisable to point out when what the bishop did with the consent of all the chapter, or with that of only part of it, should be valid, and it made the distinction in the following way: that where the bishop, along with his chapter, were compelled to do any of those things mentioned in the second and third laws of this Title, and they disagreed among themselves, the act of the majority would be valid, their decision being more proper and reasonable than that of the minority. But where those who are fewer in number decide upon something more suitable, and more for the benefit of the church, then their decision must be valid, and not that of the majority. If, however, they should desire to do anything, or to establish any regulation voluntarily, and not through compulsion; in such a case all should agree in order for their act to be valid, and where any one of them opposes it, what the others do will be invalid.

When they desire to do any of these things, all the members of the chapter should be summoned, where they are in such localities that they can readily come: and if they should not do so, their act will not be valid, where those who were summoned desired to oppose it, whether they are one, or many in number. This is the case because the opposition of one person, who was not notified, is a greater obstacle than the opposition of many, who were present when they desired to act.

LAW XI.

To What Penalty Prelates or Priests Are Liable, Who Unlawfully Alienate the Property of the Church.

Prelates, or priests who improperly sell or dispose of the property of their church, without reason and without law, should not remain unpunished. And if anyone should do such a thing, or be accused of it, or be convicted by law, he can be suspended from his office, and be deprived of his benefice, and he can even be excommunicated, until the church recover its property. However, when he is summoned in a lawsuit concerning the property which he has alienated, in order to be compelled to return it, and, before the suit was begun, he should, by way of answer, return the said property to the church; or where, not being able to do so, he should make reparation by means of money, or by the transfer of other landed property, and makes good to the church the losses which it had sustained on this account, he should not be subjected to the above-named penalties. Moreover, he who purchased real estate under such circumstances, being aware that it belonged to the church, and did not make the purchase in the way stated in the laws of this Title, shall lose it, and the church shall recover it, along with the rents and profits which he collected; and he has no claim on the church for the price he paid, but should assert his claim against the party who sold it to him. And if anyone should receive such property, knowingly, as a gift, contrary to law, he should return it to the church, along with all the income which he received from it, and should give an equal amount out of his own property. This same rule prevails where anyone receives landed property belonging to the church, by way of security, or under a lease of the kind styled *Emphyteusis*.

LAW XII.**The Church Can Claim Its Property from Those Who Alienate It, or from Anyone in Whose Possession It May Be Found.**

The Church has the choice, in claiming its property which has been unlawfully disposed of, to recover it, either from the party who is in possession of the same, or from him who alienated it, whomever of the two it may prefer; and if it should recover said property, or its value, or damages for the loss it sustained by reason of it, from one party, it cannot afterwards make a claim against the other; if, however, it cannot collect the entire amount from one, it can claim what is lacking from the other: and where the church does not recover the property from the prelate who alienated it, he himself can make a demand for it from the person to whom he transferred it, not on his own account, but on the account of his church; and the other cannot set up a defense against him, and state that he is not obliged to answer, by saying that he himself gave or sold it to him: and this is the case because the church should not suffer injury because of the wickedness of its prelate. Where, however, the prelate has property of his own, or any income separate from that of the church, the judge can compel him to return the price he received for the property which he sold, and, in addition, the value of any other improvements which he may have placed on said property.

TITLE XV.

On the Right of Patronage.

Nature, as well as reason, influences men to love the things which they create, and to preserve them, as far as they are able, in order that they may improve, and not suffer loss; as, for instance, a father loves his son, and tries to take care of him, in order that he may live in good health; and he who plants a tree, waters it, in order that he may obtain fruit from it of which he can make use. This same thing happens with regard to all matters which men make or create, for they are, as it were, in the nature of children; and, moreover, such creatures as possess knowledge and reason should honor and love those who have served them, or from whom they have received good deeds. Wherefore, he who builds a church, should love and honor it as something he has made for the service of God; and, on the other hand, the church should love and honor him, and acknowledge him as a father.

Since in the preceding Title we have stated that the property of a church should be preserved, and not alienated, or diminished in value, except for certain reasons; it is proper for us to speak in this place of the rights which those persons who build churches, and are called patrons, have in them. We shall first explain what the word patron means; what patronage is, and by what means it is obtained; as well as what rights a patron has in the church; and also whether a priest should, or not, retain a church to which he has been appointed without having been presented by its patron; in what ways the right of patronage can pass from one man to another; what should be done where there are many patrons in one church, and they do not agree upon the presentation of a priest; and for what space of time they have authority to make a presentation, after a church has become vacant.

LAW I.

What the Words Patron and Patronage Mean, How the Latter Is Obtained, and What Rights a Patron Has in a Church.

The word *Patronus*, in Latin, means, in Castilian, a father who bears a burden. For as the father of a man is burdened with the care of his child in bringing it up and protecting it, and in seeking to obtain for it all the good which he can; so he who builds a church is bound to bear the burden of it, by providing it with all things needful when he builds it, and by protecting it after it is finished. Patronage is the right of power, which those who are patrons of churches obtain in or over them on account of the benefits which they confer upon them, and this right every man gains by reason of three things. First, on account of the ground which he gives to the church, on which it is built. Second, because he builds it. Third, on account of the landed property which he gives it, which is called its endowment, by means of which the priests who serve the church are enabled to live, and with which other things can be accomplished, as is stated in the Title which treats of how churches should be built. Moreover, the patron by reason of his right of patronage, is lawfully entitled to three things. One is honor: the second is the benefit which he should derive from it: the third is the care and labor which he should undergo.

When the church is vacant, he should present a priest for it. This is understood to be the case where it is not a cathedral or a conventual church,

for in those of this kind the chapter or the convent must select its prelate: and, after this is done, they must present their choice to the patron, that he may approve of it, and give his consent. If, however, the patron, when he wishes to build a collegiate church, which means a conventual church, should say that he desires to have this right in it, either alone to choose a prelate, or to do this with the other priests who are there and possess the right of election, and the Pope gives his consent, he is entitled to this right, otherwise not. This rule also applies where the Pope grants the privilege to enable this to be done, although there may be no patron. Where it is the custom for the patron to be present when the priests hold the election, or when they request him to come, this he can do, although the Pope may not command it. It is also a source of honor to him in another respect, as, when he goes to the church, they should place him as superior at the head of the procession, when one is formed, and he should have, while in the church, a more honorable place than the others.

LAW II.

By What Things a Patron Can Profit in the Church Where He Is Patron.

Where a patron is oppressed with poverty, so that he has nothing to live upon, the priests can give him a portion of the revenues of the church, where he is patron, for his support, if they are sufficient to provide for all in a moderate way. For, although the church should assist all poor persons, it is especially required to do so in his case, and more abundantly than in those of others. This is one benefit which he derives from it, and, in addition to this, there is another, which is, that every year he can have certain specified revenues from that church although he may not be poor, if, when he began to build the church, he stated to the bishop what income he should receive from it.

LAW III.

Patrons Should Be Careful to Exert Themselves to Preserve Churches and Their Property.

A patron should be careful to preserve his church, and exert himself in its behalf, whenever this is necessary; for if anyone should attempt to cause injury or loss to the church or to its property, he should protect it. Moreover, when he knows that the priests of the church are injuring its lands, books, vestments, or any other property belonging to it, he should warn them not to do so: and if they should be unwilling to desist on his account, he should communicate the fact to his bishop, or his vicar, that he may punish them, and prevent them from diminishing the value of the property of the church. But where the bishop attempts to do anything to lessen its value, or has already done so, the patron should inform the archbishop, that he may oppose it: and where the archbishop attempts to do any of these things, he should apply to the Pope to punish him, and prevent him from doing them, since there is no other prelate of higher rank who has the authority to compel him to make amends. Although a patron has the power to do this, neither he nor any of his heirs should appropriate, or alienate any of the church property, or commit any fraud with regard to it, and if he does so, he should be considered infamous until he returns said property, and if he is unwilling to return it, he should be excommunicated for that reason. This is understood to be the case where the patron is a layman, but where he is a priest, he

should be suspended from his office and his benefice, until he makes reparation: and where he is not willing to make amends for his act, he should be deposed on that account.

LAW IV.

Patrons Should Not Appropriate Any Property Belonging to the Church.

When any person builds a cathedral or conventual church, he obtains thereby the right of patronage in it, and should, for that reason, have honor, profit, and care in protecting it, just as he would in the case of the other minor churches which belong to parishes, as is stated in the fourth law preceding this: and no one should take anything from it except what is permitted by the law of the Holy Church: wherefore, if any laymen, because that they are patrons, attempt to appropriate the tithes, and the offerings of bread, wine, or other things which are presented to churches, the Holy Church forbids them to act thus, and she does not do this without reason. For if, under the ancient law, no one, with the exception of the priest, dared to take or eat the loaves offered in the Temple; how much less should Christians dare to take them, eat them, give them away, or sell them to someone else, for no one should have these offerings but the priests who give their services to the churches and administer the Sacraments to the people, and pray to God for them; and, for this reason, the Holy Church commands, that if any Christian should do a thing of this kind and should refuse to make reparation, he shall be excommunicated, and excluded from the benefits of Christianity until he makes amends.

LAW V.

Bishops Should Not Appoint Priests to Churches, Unless They Have Been Presented by Their Patrons.

Where a church, to which any persons have the right of patronage, becomes vacant for any reason whatever, neither the bishop, nor any other prelate, should appoint a priest for it, unless its patrons have presented said priest to him; and, if he should do so, the church should not retain said priest, but the same person who appointed him should remove him on account of his own shameful conduct, and appoint the one presented by the patrons, where he is a person deserving of it: and, when he is unwilling to do this, the patrons should complain to some other prelate of superior rank: and the said superior must remove the person whom the bishop, or other prelate appointed, and appoint him whom the patrons presented. If, however, the bishop should refuse to receive the priest whom the patrons presented for the church, declaring that he was not worthy of the place, and did not deserve to have it, he should prove this; and, if he does prove it, he whom the patrons appointed should not be accepted, but another should be presented who is deserving, and then the bishop should accept him; and when the bishop cannot, or does not, desire to produce the proof, he is bound to accept him who was presented in the first place. But where it happens that the bishop is not willing to do any of these things, a complaint can be filed against him before his superior, and the latter must order him to prove what he stated, or to accept the priest whom the patrons presented to him.

Patrons cannot give a church, or appoint a priest to it by their own authority, but they should only present him for the place: wherefore, if they should appoint a priest to any church, and afterwards should present another for it, he who was presented should have it, and not he to whom it was given

in the first place; for patrons by their donation do not gain any right in a church, and this is the case because when anyone gives what he has not the right to bestow is just the same as if he did not give it at all.

LAW VI.

Patrons Can Change Their Minds When They Present Priests to the Bishop.

Patrons, whether priests or laymen, can have churches. There is, however, a distinction in the presentation made by each of them: for where the patron is a layman, and presents a priest for the church, and, before the bishop accepts him, he wishes to present someone else, he has the right to do so, but the bishop has the choice to give to the church which of them he desires, provided he is a man suitable for the place; and if he should give it to the one who was last presented, the latter cannot demand it of the one who holds it, nor of the bishop who gave it to him, nor has he, moreover, any claim against the patron who presented him first; for the former has a right to change from one to another, unless his selection should be for the worse. He can, however, make a demand upon the bishop to give him another benefice by which he can live; for the reason that he was not willing to accept him when he was presented, and dismissed him; alleging as an excuse for not receiving him that the patron had changed his mind, and, in the meantime, had presented another for the place. Where, however, the bishop gives the church to the first one, the second has no claim whatever against him, or against the priest to whom he gave it, or against the patron who presented him; except where the bishop gave the church to a priest whom a person who was not its patron, presented to him; or gave it to some one who was not presented by anybody; for then he who was appointed by the genuine patron, even though he were presented subsequently, can claim the church of the first, and it should be taken from the latter and given to the second. Moreover, where it happens that the patron presents two or three priests at once, the choice rests with the bishop to give it to the one whom he considers best qualified.

LAW VII.

For What Reasons Ecclesiastics, Who Are Patrons, Cannot Change Their Minds, Like Laymen, When They Present Priests.

A patron, who is a layman, when he presents a priest for a church, has the right to change his mind, if he desires to do so, and to present another priest before the bishop accepts the first one, as is stated in the preceding law; but where the chapter of any secular church, or any religious order, or any ecclesiastic whosoever, holds the right of presentation to a church, he cannot do this, and, after he has presented the priest, he cannot change his mind and present another: and if he should do so, the second person appointed, does not obtain any right whatever in the church by reason of such presentation, nor will the act be valid if it is given to him, but he who was presented in the first place should have it; and, for the reason, that ecclesiastics should be more learned in the government of churches than laymen, and have more experience, and know better what priests should be presented according to law, they imposed upon them as a penalty that they could not change one priest for another, as laymen do, who are not so well informed in such matters. Moreover, where a priest has a right of presentation to a church he should not present himself for it, because this would show that he was covetous: for no one should gain an honorable position through covetousness, but by labor and by deserving it, and because there should be a dis-

inction between him who presents, and him who was presented it; but where the patrons are several in number, and one of them is a priest, the others have authority to present him. A patron can present his son, where he is such a person as deserves to have the church.

LAW VIII.

In What Ways the Right of Patronage Can Pass from One Man to Another.

The right of patronage can pass from one man to another in four different ways, by inheritance, by gift, by exchange, or by sale. By inheritance it passes to others, and they obtain it, as children or grandchildren do, who inherit property from their fathers, or grandfathers, or others, or from relatives or strangers; for just as they inherit property from others, so they can inherit the right of patronage along with it. Moreover, the right of patronage passes by gift, for a man has the right to bestow it upon another, or upon a church, or upon a monastery: and, in order for such a donation to be valid, it should be made with the consent of the bishop of the church to which the patronage belongs, whether this is obtained before or after the donation is made; for otherwise it will be void. This right can also pass by exchange or sale, not by exchanging or selling it separately by itself, but along with other things which are situated in some certain locality: and this is the case because, being joined to the church, it is of a spiritual nature, and no one can exchange or sell it for something which is temporal. One church, or one right of patronage can, however, be exchanged for another with the consent of the bishop, for, otherwise, the transaction will not be valid; and he who buys or sells anything of this kind, by itself, will, in addition, be guilty of simony. Wherefore, the right of patronage can pass absolutely from one man to another in the four above-mentioned ways. There are other cases in which it passes temporarily, as we shall show hereafter.

LAW IX.

For What Reasons the Power to Present a Priest Can Pass from One Man to Another.

Where a religious order, or any individual, rents, or gives as security, a town or village over which he, or it, has dominion, if there is a church there, and the right of patronage belonged to either, the power of presenting a priest to the church, whenever it is vacant, and the rights of patronage existing with the same, pass to him who leases it, or takes it as security, or to him who leased it, the priest whom the other party presented, should not lose his church for this reason; unless he who possesses the sovereignty of that locality especially reserved for himself the right of patronage which he held when he made the lease, or gave the security. But where the party who was in possession of the said town believed in good faith that the right of patronage was not reserved, when he took the lease, and that he had a right to present the priest, and the church happened to become vacant; and, under such an impression, he presents a priest to the church, and the bishop should give it to him, the latter ought not to lose it; even if the owner of the property should file a complaint stating that he had the right of presentation, for the reason that he had reserved the patronage in the lease, and should prove that this is the case. But, if while the suit was pending, he should present a priest, and the owner afterwards proved that he had reserved this right, the priest cannot hold the church. Where a person claims, in any other way, that the right of patronage belongs to him, and he is in possession, and the men of that neigh-

borhood are of the opinion that he is the patron; if the church is vacant, and a person of this kind presents a priest for it, and the bishop gives it to him, the priest should not lose it, although he was presented while a suit was pending in which the right of patronage was in question: and if even he who was in possession should be defeated in court, for the reason that the right was not his, but belonged to the other who claimed it; the priest ought not, for this reason, to leave the church, since he was presented by the party in possession, and the men of that neighborhood considered him the patron.

LAW X.

What the Law Is When There Are Several Patrons in One Church, and They Do Not Agree in Presenting the Priest.

Where several persons have the right of patronage in one church, and disagreement arises among them on account of the presentation of a priest for it, so that some present one person, and some another; the bishop should accept him whom the majority present, and all the more readily when the priest whom they present is good. But where the parties are equal in number on both sides, the bishop should then consider carefully the priests who are presented, and choose him who is the better educated and the more experienced; and where both are equal in these respects, the bishop can select which one he desires, or order that new candidates be presented: and in a case of this kind there is no reason for anyone of those presented to complain of the bishop, nor have they any claim against him. Where the parties are not willing to present any others, and the bishop sees that he cannot accept any of those presented without causing scandal to the patrons, he should withdraw the relics from the church, and close the doors so that the service cannot be said, until such a time as all, or the majority of them, agree to present a priest as they should do: and this is understood to apply to cases where the priest can take this step without causing any scandal to the people.

LAW XI.

For How Long a Time After a Church Is Vacant Should the Bishop Wait for Its Patrons to Agree in Making the Presentation.

Men sometimes disagree concerning the right of patronage when they wish to present a priest for a church, some declaring that they are patrons and have the right to present the priest, and that the others have not: and, when such a contest as this arises, the Holy Church ordained that the bishop of that diocese, before appointing a priest, should wait, while they were disputing concerning the right of patronage, for the space of four or six months, at least, from the time the church became vacant; and if, during this period, the proceedings arising from this dispute are not terminated, from that time forward the bishop has the authority to appoint a priest to the church.¹ But, notwithstanding this, the rights of those in whose favor the patronage was decided were saved, so that they could present the same priest which the bishop had appointed to the church; and this should be done in maintenance of the right of patronage, for the reason that no one may afterwards be hindered in the exercise of it. Moreover, where a disagreement arises between the bishop and other men calling themselves patrons of some church—the

¹ The time allowed for preparation by a patron is limited to four months by the Canon Law. "*Patronus Ecclesiae vacanti infra quatuor menses provideat, alioqui ius conferendi Episcopus habet.*" A bishop cannot permit a benefice to remain vacant longer than six months, where a dispute concerning the right of presentation is not settled within that time. "*De patronatus jure orta quaestione, neutro conferente, debet Episcopus post sex menses beneficium conferre.*" (Corp. Jur. Can. Loc. Com. Tit. Patronus.)—Ed.

bishop claiming that they were not such, and the others that they were—a priest should be appointed steward of the church, to collect its revenues and hold them until the case has been decided, and employ said revenues for the benefit of the church, if it should be necessary; or keep them faithfully, and deliver them to the priest to whom the church may afterwards be given.

LAW XII.

The Right of Patronage Cannot Be Divided, But All Patrons Should Possess It Equally, no Matter How Many of Them There Are.

The right of patronage should be equally observed for all of the patrons, however many of them there may be, and they should not divide it in any way, because it is not a thing subject to division; but each patron, on his own account, should rather do all things which devolve upon him by reason of his patronage, excepting the presentation of a priest, for this he cannot do, unless all are united. And although some patrons leave heirs who inherit their right of patronage, these, in some cases, being a few in number, and in others, many, no one has a greater right to the patronage than another on this account, but all hold it in common; and this would be the case where there were three patrons, and one left one heir, another two, and the third three, or more. Moreover, where many men unite to build a church or to endow it, although one may give more than another in building or endowing it, he is not, for that reason entitled to a larger share of the patronage than anyone of the others who gave less. For this is, as it were, a spiritual matter, and for that reason the right which they possess in it cannot be divided into greater or smaller portions.

There are cases, however, in which superiority should be recognized, and be shown to him who gave the most to the church, and this can happen in three different ways. First, with regard to the good which is done; as where it happens that the patrons of some church fall into poverty, and the church meets with loss, so that it is not possible to assist all; in this instance it should aid him who did the most for it. The second is with respect to honor; for the most honorable place in the procession and in the church should be given to him who conferred the most benefits upon it. The third is concerning favor, as where there are two patrons in one church and they disagree concerning the presentation of a priest, so that one of them presents one person, and the other another; for, in a case of this kind, where the priests are equal in merit, one having no superiority over the other, the bishop should favor him who had done the most for the church, accepting his presentation, and giving the church to the priest whom he presented. A church should not consider itself injured by having many patrons, for the more there are the better it will be preserved and protected by them.

LAW XIII.

What Priests Patrons Should Present, by Preference, for Churches When They Become Vacant.

Neither a bishop, nor any other prelate, should appoint priests to a church when it becomes vacant, to which certain persons have the right of patronage, unless the patrons present them: and they should, in preference to others, present the sons of the church, if there should be any available for that purpose, and, if not, others belonging to that bishopric; as well as the sons of the parishioners. Where, however, a bishop is the patron of a church situated

in another bishopric, he has a right to present a priest for it from either place he may desire: and this privilege the Holy Church granted to bishops rather than to other patrons. Moreover, where it happens that a legate, who has power to confer benefices, comes from the Pope, and finds that a church is vacant, in which a priest has the right of presentation on account of his church, and not on account of his patronage, he can bestow it upon any priest he wishes, wherever he may come from, although the patron may not present him for it. For as the right which a bishop enjoys of appointing a priest to a church cannot be interfered with by a legate to prevent his appointment: so there is much less reason that the patronage that a priest possesses through his church should hinder him: and this is the case for the reason that the prelate has a better right to give the church, than the patron has to make the presentation to it.

LAW XIV.

How Law Ought to Be Observed, When Priests Are Ordained for Churches That Have Patrons.

There are servitors in parish churches who are ecclesiastics, and assist, in the service, their superiors who have charge of these churches as parish priests: and the latter, at times act, and ordain certain of the said ecclesiastics on account of these churches, that is to say, in the name of them. For which reason, where anyone of these churches happens to be vacant, the right of him who was patron of it should not be interfered with by the priest who was ordained on account of said church, so as to hinder the patron from presenting another for it if he desires to do so: and he whom he presents has the better claim, and should have the place; and the other, ordained on account of the church has no right to it, or any claim against it, for the mere reason that he was ordained for it. But where the patron consents that anyone should be ordained on account of his church, he cannot afterwards present another, but only him whom he agreed to: and he who is the superior should provide, as far as he can, for the other priests who are ordained for the service of the church.

Persons of this kind—since the church is not a conventual one, and they do not compose its chapter—unless they are given some means by which to live, have no power to elect a prelate to have charge of the church, but he who is its patron must present one for that office.

LAW XV.

For What Reason the Holy Church Deemed It Proper That Laymen Should Have the Right of Patronage.

The Holy Church tolerates and agrees that laymen shall have some power in spiritual matters, as, for instance, in the presentation of priests for churches, which is a spiritual matter, or closely connected with it, and this was done to do them favor and kindness. And, although churches, with their endowments and all the other property which they possess are under the control of the bishops, and they should govern them and appoint priests to them; the Holy Church deemed it proper that laymen should have the power to present priests to churches where they are patrons. This favor, which she conferred upon them, has been practised for such a long period of time that it has become a common right: and on account of this power which laymen possess, the right of patronage is spoken of as spiritual, and is united with

what is spiritual: for if it were purely spiritual the legates could not exercise it, as, according to the intention of the law, laymen have not power, of themselves, to interfere in matters belonging to the Church, and especially in such as are of a spiritual nature. The same law also prevailed under the ancient religion, for those whose duty it was to oversee and direct spiritual matters and temporal affairs, were separated from one another.

TITLE XVI.

On the Benefices of the Holy Church.

The members of the body of a man are dissimilar and separate, although they are all intended for his support; and for this reason he who has them all perfect receives from them two things, symmetry and service; and, with the view to this comparison, St. Paul said that the Holy Church was the body, and its servants the members, who preserved its strength by serving it well, and contributing to its adornment. For as all the other members receive life from the heart of man, so all those who serve the Holy Church receive from it advantages and support, and the advantages consist of the benefices and offices which they obtain from it, by means of which those who serve it are supported. And since in the preceding Titles we spoke of churches, of the matters relating to them, and of the right of patronage which men have in them; it is proper to speak here of the benefices and dignities which ecclesiastics obtain by means of them. In the first place, we shall show what a benefice means; who has the authority to give it, and to whom, in what way, and during what period of time it may be given; and where it is not bestowed during that time, who has power to bestow it afterwards. Also to what penalty those who give benefices, as well as those who receive them, in improper ways, are liable, and for what reasons those to whom they are given lose them.

LAW I.

What the Word Benefice Means, and Who Can Give a Benefice.

The word benefice means good done, and there are many different kinds of them in the Holy Church, for in cathedral or conventual churches there are canonicates or prebendships, and these benefices should be conferred by bishops, or by other superior prelates in churches where there are no bishops; as, for instance, abbots or priors, and others of every kind who have the right to confer them: and it is understood that they should do this with the consent of their chapters, according to the common law. However, because in certain churches this law was not observed, and in some of them the custom prevailed for the prelates to confer the benefices, and in others for the chapters to do so; on this account the Holy Church ordained that in every church that custom should be observed, in conferring them, which has been practised for a long time; and she ordained that this should also be observed in bestowing certain offices and livings, and also in giving parish churches.

In addition to all the things mentioned in this law, the Pope has the power to grant dignities, benefices, and all other ecclesiastical livings belonging to the Holy Church, to whomever he wishes, and in whatever bishopric he may desire.

LAW II.

What Kind of Persons the Ecclesiastics to Whom Benefices Are Given Should Be.

Those ecclesiastics to whom dignities, benefices, and parish churches which include the care of souls are given, should be educated, honorable, and well informed with regard to the customs of the Church; and these same qualities those to whom the minor benefices, canonicates, or prebendships are

given, should have; at least to such an extent that they should be educated enough to understand Latin, and be able to conduct the service of the church, that is, know how to read and chant. Those first mentioned, who have the care of souls, should be more learned, as is stated in the Title on bishops, in the law which begins with: "A prelate should be learned and intelligent;" and this is the case for the reason that they have to preach to the people, and, in addition, explain to them the Holy Catholic Faith. Each one of the above named persons should be such as is willing and able to conduct the service of the church daily, by himself, according as is proper and necessary in the locality where each one is stationed. And, as one office should not be given to many persons, but only to one; so the parish church with the care of souls ought to be given to one person alone, and not to several, and he should govern it as well in spiritual as in temporal matters, and although many priests may be associated in its service they should all be guided by his commands.

LAW III.

How Old Boys Should Be, in Order to Be Able to Hold Benefices of the Holy Church.

Boys should not hold benefices in the Holy Church until they are fourteen years old, or are such that in a short time they can receive the rite of ordination, and this is the case because they cannot yet conduct the service; but, after they have reached the age of fourteen years, they are entitled to hold the minor benefices mentioned in the preceding law. Yet, for the reason that there are some who at an earlier age are more intelligent than others, on such as these, who have received any holy order, the minor benefices may be conferred, where they are more than seven years old, as they will have sufficient intelligence to conduct the service.¹ Moreover, he who holds a benefice in any church which was given him on account of the latter, and said benefice was bestowed upon him in order that he might live by means of it, should not hold another in another church while he still retains possession of the former, for the reason that he cannot render service for both. But where a priest has such a benefice as the one above mentioned, and his bishop, or other prelate, gives him another in another church, in trust, and it is of such a character that he is not required to render service to the church daily on account of it, he can hold the same. If, while a priest holds a benefice in one church from which he derived his title, he should be given another where he is bound to conduct the service every day, the bishop in whose bishopric he holds the first benefice can deprive him of it: for no one should have more than one office, benefice, or living with the care of souls, except for special reasons, as stated hereafter. Where having one he accepts another, he leaves the first vacant, and if he desires to retain it, and institutes legal proceedings for that purpose, he should be deprived of the other which he received afterwards, as soon as the suit has been begun by petition and answer; and the prelate to whom the donation of the first benefice belonged, can give it to any other priest who is fit for it; and if he is unwilling to give it within six months, his chap-

¹ The age of seven, mentioned in the text, was far from being the limit for the appointment of boys to even the minor offices of the Church. Alonso of Aragon, the son of Ferdinand the Catholic, was raised to the archiepiscopal throne of Saragossa when but six years old. The archbishopate of Rheims, whose prelate crowned the kings and queens of France was, at one time, presided over by a child of five. This extraordinary custom was confined to no rank of the Roman Catholic hierarchy. S. P. S.

But "ever since the Council of Trent (1545-1563) it has been the law of the church that no one can be appointed to a collective chaplaincy before his fourteenth year". Brandeis, J. in *Gonzalez v. Archbishop*, 280 U. S. 1, 13, holding ineligible one presented prior to that age though having reached it when the trial court directed his appointment. C. S. L.

ter, or other superior prelate, who presides over it, can do so. This is the case because he did not bestow it within that time, and permitted him to take it who has no interest in it: and moreover, the said prelate must pay a sum equal to the revenue which he collected from that office or benefice from the time it was vacant, and employ it for the benefit of the church where the living was situated. The Pope, however, can grant permission to one ecclesiastic to have two offices or two churches, and especially is he empowered to do this in cases of persons of distinguished lineage, or who are highly educated; for such as these, more than others, should have the preference in the matter of benefices, and this is something no other prelate can do.

LAW IV.

What the Reasons Are For Which a Priest Can Hold Two Churches.

A priest cannot hold two churches, or two benefices, without the permission of the Pope, as stated in the preceding law. There are, however, certain instances in which this can be done, and they are five in number, as follows. First, when a church is so poor that a priest cannot live on the income from it. Second, when one church is under the control of another; for he who is the prelate of the greater one is also that of the less, and he can, of himself, appoint a priest to the latter for its service. Third, when a parish church is joined to an office, or a benefice; for its priest can hold the church, and appoint a vicar to it who may act as his representative, and be entitled to its revenues, but the former must conduct the service in the other where the office or benefice is situated, for he cannot, by himself, conduct the service of two churches; however, he must not appoint this vicar except by the order of his bishop. Fourth, when the priests are few in number, and each church cannot have its own priest; and this is understood to refer to churches which are outside of cities, for they are not so wealthy, nor do the priests receive revenues from them on which they can live, like those of cities or large towns. The fifth instance is, that a priest can have a church to which he is specially appointed, and another besides, if the bishop of the diocese should give him charge of it. In this case, however, he would not be the prelate of that church which he held by the authority of the bishop, but its steward: and the bishop can deprive him of it, whenever he desires to do so, and give it to another. But whenever a bishop desires to place a church in charge of a priest, he must do this for some just and very proper reason; and this would be the case where no priest who was suitable could be found for it, or for some other reason of this kind. For if bishops could give churches in charge in any other way, it might happen that they would bestow them on their relatives rather than on others, when they saw that they could not give them in any other way: and by doing this they would commit fraud, for the reason that the rights of the churches would be interfered with, as every one ought to have its own recognized prelate to conduct the service, and not some one else who holds it in trust for another.

LAW V.

In What Way Prelates Should Give the Benefices of the Holy Church to Priests.

Prelates should give all the offices, benefices, and livings of the Holy Church, entirely and without diminution, to the priest upon whom they are

conferred. They should not deprive them of any of the rights or property which belong to them; and as no living should be given to two persons in order that they may divide it, a single canonicate, or prebendship should not be bestowed upon two persons in order that they may share its revenues, or that one person may take it, and the other wait until some other benefice becomes vacant. Sometimes, however, two prebendships can be made of one, if it should be of such a character that both ecclesiastics can live upon it in a suitable way when divided. This can be done where the canons or prebends of a church have not sworn that their number shall not be increased; for where this is the case it cannot be accomplished without permission of the Pope, and if it should be done, they will be guilty of perjury.

Though it has been stated above that benefices should be given without the removal or diminution of any of their revenues; nevertheless, where a prelate, along with his chapter, resolve to take the revenues of a benefice, which is vacant in their church, in order to use them for any suitable purpose necessary for the benefit of said church, they have authority to do so, and to use them during a certain specified time, this, however, it is understood must take place before the benefice was given: and although the prelate can do this in his own church, it is not understood that he can exercise this power over all benefices which may become vacant in his bishopric, unless the Pope grants him permission.

LAW VI.

The Benefices of the Holy Church Should Not Be Given Under Any Conditions.

A prelate should not make any condition or contract with the person to whom he gives a living or benefice belonging to the Church; but they should be given unreservedly, without any prohibition whatever, for in giving, as well as receiving things which are spiritual, none of the above-mentioned conditions should exist. But where a benefice becomes vacant, and the chapter, along with its prelate, decree that whoever it is given to shall be required to perform some particular duty, as, for instance, to say mass on every festival of St. Mary, or of any other saint, or something similar to this; they have the power to impose a condition of this kind, for the reason that it is not agreed upon with anyone, but placed as a charge on that benefice, so that whoever accepts it is required to carry it out. They can also make an agreement with him upon whom they confer the benefice, in such a way that although the condition is not actually stated when the benefice is given him, he who receives it will understand that he is bound to fulfil it where it is a spiritual condition. This would be the case if the prelate should say: "We will give you this benefice if you will cause yourself to be ordained, and serve the church." In any of the above mentioned ways in which benefices are given, which are set forth in this law, there will be nothing worthy of censure. The same rule applies where a man builds a chapel in a church, with the consent of the bishop, under the stipulation that a priest shall say mass in it every day, which also should be observed, as above stated.

LAW VII.

The Benefices of the Holy Church Should Not Be Given Secretly.

Neither the offices, benefices, nor any of the other livings of the Holy Church should be given secretly, for the reason that men will suspect that those who give, and those who receive them, in this way, have done something which is not proper to be done; but, if a prelate clandestinely gives a

benefice to a priest, and he to whom it is given is one who deserves it, the condition will be valid, although it should not have been made in that way. This is understood to refer to a case where it was given during a time when this could be lawfully done. Moreover, the donation of a benefice by a prelate to a priest will be valid even though he to whom it was given was not present; and, if the prelate should order anyone to be placed in possession of said benefice, instead of him to whom he gave it, the latter obtains the right, through this, to demand it of him. But where he to whom the benefice was given in this way has left a representative in his place, and has placed him in possession, the other party obtains, by this means, the right of control, as well as of possession. This will also be the case if he should send him his letter by which he appointed him his representative. By any of the means mentioned above priests can gain possession and control of benefices given them, and in no other way; except where they bestow them upon themselves, and take possession of them; or where they put one person in possession instead of another, he not being aware of this, and when he learns of it, ratifies the act. All those to whom benefices are given, as stated in this law, have the right to receive the revenues from them, and others should not take them.

LAW VIII.

During What Time Benefices, Which Are Vacant in the Holy Church, Can Be Given.

The word negligence means, in Latin, as in Castilian, that a man fails to do what he ought and can do, by not giving it sufficient consideration. For this reason prelates are very often negligent in not bestowing benefices when they are vacant, during the time that the law gives them the right to bestow them. And the time within which they should be given is six months; wherefore, any prelate who does not give them within this time loses the right to give them, which he formerly enjoyed, so that afterwards he has no authority to do so: and where a prelate has been suspended or excommunicated, whether he was guilty or not, the time included in the sentence should not be counted in the said six months, unless he was negligent in not desiring to exert himself to obtain absolution.

Moreover, where he happened to be compelled to go to Rome for some reason that was compulsory, as, for instance, to obtain absolution from a sentence which had been imposed upon him, or because the Pope had sent for him; neither while going, remaining there, nor returning to his bishopric, the six months aforesaid should count against him, except after he reached his bishopric. This also would be the case where any legal impediment existed on account of which he would not be able to bestow the vacant benefice. The same rule will apply where the bishop did not know that the benefice was vacant, for then the six months would not be reckoned: but where the cathedral church, or any other where the prelate has to be elected, becomes vacant, and an election should not be held for three months, the power of creating a prelate passes to the next superior in rank, as is stated in the Title on Prelates.

LAW IX.

Concerning Prelates Who Do Not Give Benefices Within Six Months After They Become Vacant and Who Has Then the Power to Give Them.

The power of bestowing benefices when they become vacant is transferred from some persons to others, through the negligence of those who have the authority to do so, where they do not give them within the prescribed

time, as is stated in the preceding law. Wherefore, if a prelate who has the sole power to confer benefices, should not give them within six months, his authority passes to the chapter. The case is similar where the chapter itself has the sole power to give them, for, where it does not do so within the above stated period, the power should pass to its prelate; and where the prelate and the chapter have this power together, and do not exercise it until the above-named time has elapsed, their authority will pass to the next superior in rank. Where, however, the bishop or the other prelate is present in their chapter for the purpose of doing this, not acting as prelate but as one of the other canons; and all of them together do not give the benefice within the term of six months, the power passes this time to the prelate, and the chapter loses it. It is understood by this that the prelate is not guilty of fraud by prolonging the time to prevent the benefice from being given until it has elapsed, in order that the power of bestowing it may pass from the chapter to himself. But if a bishop who has the authority to give benefices without the consent of his chapter, as has been stated, should die before he makes the donation, the power of giving them does not pass to the chapter; for, while the church is vacant, the chapter has no authority to give benefices, or begin any proceedings to alienate property belonging to the church, until it has a prelate.

LAW X.

Prelates Should Not Give, or Promise, Benefices Before They Become Vacant.

Neither a prelate, nor a chapter should promise, or give any benefice of the Holy Church, large or small, before it becomes vacant. This rule was established in order that men may not have reason to eagerly desire the death of one another, or exert themselves to do injury to, or give one another something which may cause death, to obtain their benefices. Benefices are said not to be vacant which persons hold *de facto*, or *de jure*. They are said to be held *de facto*, and not *de jure*, when parties enter upon them without permission of those who have the power to bestow them, or where they were wrongfully given, although this may have been done by persons who had the power to do so. Those hold them *de jure*, and not *de facto*, to whom they were given as the Holy Church commands, although they may not actually be in possession of the same. For this reason, where any one is in possession of a benefice, and has the right to it in any of the above-named ways, and some one, by stating that the benefice is vacant, obtains a letter from his superior bestowing said benefice upon him, it should not avail the latter anything, nor does he obtain any right in the benefice by means of it; and this is because he obtained it through falsehood. But where the prelate knows that it was vacant *de jure*, he can then give it, even though someone else may hold it *de facto*; for the donation will be valid, and he can demand it of him who holds it *de facto*.

LAW XI.

For What Reason the Pope Can Grant Benefices Before They Become Vacant, and Anyone Else Cannot.

The Pope, and no one else, can bestow benefices before they become vacant. This is the case because he is superior to all others of the Holy Church and can grant dispensations to them, except in what concerns the Articles of Faith, as previously stated. For which reason he cannot be controlled by any decree which men make, except he should fall into manifest heresy. Although other prelates cannot give, or promise benefices before they become vacant, they have authority to promise benefices in the following way; by saying, that when they can do so, or when something happens, they will give to

some party a certain benefice in their churches. This is the case because they can manage in many other ways to provide the parties with benefices, even although none of the priests should die; for they can increase the revenues of their churches and make provision by means of them, or, where anyone of those belonging to the church is made a bishop, or the bishop should enter a religious order, or where any reason stated in this Title exists in the law which begins with: "Where any priest abandons." If, however, anyone should afterwards die, the benefice which he left vacant can be given to the party on account of the promise made him; and if the bishop should not give it to him, or provide for him in some other way, he can make a demand upon him to perform what he promised.

LAW XII.

Concerning Priests Who Are Received as Companions in Churches and for What Reason They Can Ask That Benefices Be Given Them.

Where anyone is received as a companion in a church, and is promised that the first prebendship that becomes vacant will be given him, he cannot demand the said benefice by reason of the promise made to him, but he can ask it because they received him as a companion. For since he is a companion, and they have means to provide for him, it is not right that he should remain without a benefice; and they cannot set up a defense against him for not giving him one, even though they should allege that they received him contrary to the law which says that benefices should not be given before they become vacant, as is stated in the third law preceding this. But where they have not received him as a companion, and he demands a canonicate, or a prebendship on account of a promise, they can allege against him the prohibition that they should not give it to him for the reason aforesaid.

LAW XIII.

What Penalty Should Be Imposed Upon Priests Who Receive Benefices Which Are Not Vacant.

Where a priest who has a church, or an office, or another benefice in said church, and is still alive, no other priest should receive it knowing that the former one is living, and anyone who does this shall lose the said benefice and never have another; and the judge who deprives him of it and delivers it to the other party, can, in his decision, declare him to be of ill repute. But where he who receives the benefice is not certain that the other party to whom it belonged is living, even though he may have to relinquish it, he should not be rendered infamous on that account, and the bishop who bestowed upon him a benefice like this should give him another one. Where, however, a benefice is vacant, because the prelate deprived the holder of it for some lawful reason, as the Holy Church directs; or where he to whom it belongs does something so that, on account of this act itself, he would have lost it; then the other priest has a right to accept it, although he to whom it belonged in the first place is still living. Where a prelate takes away a benefice by reason of a decision, giving a wrongful sentence against the holder, and the latter does not appeal to the superior of him who deprived him of it, and to whom he can lawfully do so, and the benefice is given to another priest, under these circumstances the latter is entitled to receive it.

LAW XIV.**To What Penalty Prelates Are Liable, Who Give Benefices to Those Who Do Not Deserve Them.**

Priests, to whom prelates give the benefices of churches, should have learning and good habits, in order that they may be such as can, and will, conduct the service of God therein: and to prevent prelates from following their own wishes by bestowing benefices on their priests who do not deserve them, the Holy Church decreed that each year, when the archbishop held a council with his bishops, he should ascertain whether they had bestowed benefices on men fit for them, as above stated. If he should discover that any of them had bestowed a benefice in an improper way, after he has warned him twice not to do so, and afterwards he should not be punished, and should continue to do this; the Council should deprive said bishop of the power of bestowing benefices, and place another good and intelligent priest in the position which he occupied. This also should be done in the case of chapters which have power to bestow benefices, where they err in not giving them to those to whom they should, and where an archbishop errs in this way, the Council should communicate the fact to his superior, and he should punish him according to his judgment. No one of the above-named persons can recover this power of granting benefices after he has been deprived of it, except with the consent of the Pope, or of his patriarch, if one was his superior.

LAW XV.**Concerning Priests Who Move from One Bishopric to Another, and How Prelates Should Receive Them.**

Some priests, influenced by malice, move from the bishopric where they are living into another; and there are certain of those who, not having been ordained, declare that they have received that rite: or are homicides or infamous persons; or have committed some offences or crimes by reason of which they should not say mass, or perform that service in the church which they should do, in accordance with the rules of the order to which they belong, and represent themselves to men to be good, while, at the same time, they are very wicked. For this reason the Holy Church forbade any prelate to receive a priest from another bishopric into his own, or to give him any benefice, unless he could show a notarial letter from his bishop in which the latter stated that he was a Christian, and had been ordained, specifying particularly what order he belonged to; and moreover, that he was of good reputation, and came with the permission, and by the order of his bishop, and that he did not come suspended or excommunicated, or as a fugitive because he had committed some wickedness.

LAW XVI.**What Measures Prelates Should Take Against Priests Who Desert Their Churches and Their Benefices, and Go Away.**

Priests sometimes go away to live in other bishoprics, and leave their churches and benefices, which they are bound to serve. For this reason the Holy Church deemed it proper to show how prelates should proceed against such as acted in this manner; and directed that where a prelate granted permission to one of his priests to go, for a certain time, to another place outside his bishopric; and the latter did not come to conduct the service of his church within the time he specified, he could thenceforth deprive him of his benefice,

unless the said priest had met with some lawful hindrance, by reason of which he had not been able to come. In a case of this kind he is not required to warn him, for the time takes the place of warning; but he would act with more moderation, if he did warn him before he deprived him of the benefice; but if, when he granted him permission to go, he did not indicate particularly the time he should be absent, but did not have the intention to permit him to remain away for his entire life, nor as long as he desired to stay, but for a certain period of time, even though he did not mention the latter specifically; as, for instance, where prelates are accustomed to grant leave to their priests when they desire to go to school, or on a pilgrimage; in a case of this kind, he should send the priest word to return to his church, and even wait for him a reasonable time; and, if he should not be willing to come, he can then deprive him of his church or benefice, where the priest does not show the prelate some good cause why he was prevented from doing his duty. But where he grants him permission to go somewhere and remain as long as he wishes, and it is customary in the church where he is priest for those who go away to retain their benefices as long as they are absent, just as those do who conduct the service; in a case of this kind the said priest should not be deprived of his benefice, but should be told to return to the service of his church, and, if he does not come, the prelate can bestow his benefice on someone else who will perform the church service in his stead, and place what remains from its revenues to the credit of the church.

LAW XVII.

For What Reason Priests Should Lose the Benefices Which They Leave Vacant, When They Are Absent More Than They Should Be.

Where a priest abandons his church, or his benefice, without the permission or consent of his prelate, in order to go and dwell in some other place, he can be deprived of it; and it is understood that he abandons it, when he accepts a benefice in another church on whose revenues he can live with moderation, and that he is required to serve it continuously; or where he becomes a knight, or a buffon, for, by such an act as this, he forfeits the privileges of the clergy, and therefore is not entitled to hold a benefice of the Holy Church; and this also would be the case if he married. But where he does not do any of the things aforesaid, by which it is understood that he abandons his church; he should not then be deprived of it at once, but should be told to return, and, moreover, they should wait for him a reasonable time, dependent upon the distance of the place where he was, and the time required to come from there. Where he cannot be found in order to send him word to return, he should be summoned to his church three times, and afterwards they should wait for him six months; and if he should not come within that time, his prelate can then deprive him of his church or benefice, and even compel him to return to his obedience, by means of the sentence of the Holy Church, if he should desire to do so.

LAW XVIII.

For What Reason a Priest Loses His Church Through No Fault of His, or Where They Give Him an Assistant, on Account of Sickness.

Where a priest, who has a church, is afflicted with leprosy, on account of the annoyance and disgust which others will undergo on his account, the church can be given to another to conduct its service and be its prelate; and he who is sick shall have the revenues of the said church on which to live, although he does not serve it. But where anyone has another disease which

prevents him from conducting the service, another priest may be appointed to assist him in the performance of his duties; he who is ill will remain the prelate, and the other will be the vicar of the church, and both should live on its revenues; and where it happens that those revenues are not sufficient for the necessities of both, he who conducts the service is entitled to receive them, and the bishop should give to the sick priest enough to support him.

LAW XIX.

For What Reasons Priests Can Receive the Revenues Derived From Churches, Although They Do Not Conduct the Service in Them.

Priests of churches which they are required to serve, can collect and use their revenues in other cases besides those mentioned in the preceding law, although they do not dwell in them; as, for instance, when they are on a pilgrimage, or at school, and this is understood to be the case if they act with the permission of their prelates. But where a practice or custom exists in any church not to ask permission of a prelate in the instances aforesaid, priests can retain their benefices by giving special notice to their chapter. Moreover, those who travel with the Pope, and in his service, have the right to retain their benefices, although they do not remain in their churches; for it is understood that those who serve the Pope are employed in the service of their churches. This rule also applies to canons who travel with their bishops: for each bishop has the right to take with him two canons of his church, and they are entitled to their revenues, although they do not perform the service. Where a priest travels in the service of his church, as, for instance, to conduct lawsuits, or to transact other business relating to the recovery of property, he has a right to receive the income of his benefice while he is absent for that purpose: for those who serve their bishops, and travel to make collections for their churches, should be included among the servants of their church; and this is understood to relate to matters outside the performance of their daily duties.

TITLE XVII.

Concerning the Simony Which Priests Commit on Account of Benefices.

The Holy Fathers always pursued, and inquired diligently into, the sins which men commit, as well under the old dispensation as under the new. They did this in order that, after they had learned the facts, they might reprimand and punish those who had committed sin, and cause them to abandon it, and by that means to live a good life in this world, as well as save their souls in the next, and offer a good example to those who came after them. Although there are many kinds of sins, there are some which are greater than others, and among the greatest is that of simony, because it is committed in spiritual matters, and laymen as well as priests are guilty of it.

Since in the preceding Title we treated of benefices and prebendships, which ecclesiastics hold; and because it happens that on account of them, more than for any other reason, men commit simony, it is therefore proper to speak of it in this place, and to show first what simony is; whence it derived this name; how many kinds there are; and also what punishment he who commits it should receive, and who can grant a dispensation for the same.

LAW I.

What Simony Is, Whence It Derives This Name, and in How Many Ways Simony Is Committed.

Men commit the sin of simony whenever they wish and have an inordinate desire, by reason of the exceeding covetousness rooted in their hearts, to purchase or sell spiritual property, or something resembling it. Simony derives its name from Simon Magus, who was a sorcerer in the time of the Apostles, and was afterwards baptized in Samaria by St. Philip. When he saw that the Apostles placed their hands on the heads of men, and that the latter received the Holy Spirit by this means, he was exceedingly desirous to possess that power, and went to St. Peter and St. John and said to them, that if they would confer it upon him, so that those on whom he placed his hands would receive the Holy Spirit, he would give them property of great value in return. He said this, thinking that they did so through great learning, and for the purpose of obtaining something from men, and not by the grace of the Holy Spirit. When St. Peter saw that his intention was evil, he told him that his property should perish with him, for he did not deserve to possess power of this kind because his heart was not firm in God, since he estimated temporal affairs just as he did spiritual ones: and for this reason the name of simony was derived from Simon Magus, since he was the first under the new religion of Our Lord Jesus Christ who desired to purchase the grace of the Holy Spirit. Wherefore, all those who purchase anything which is spiritual commit the sin of simony, and are called simoniacs.

Spiritual things are of three kinds. The first the gift of the Holy Spirit, which men receive from it, as, for instance, the foretelling of coming events, and this the prophets and many other saints possessed; also the gift of performing miracles, and of healing the sick, and of casting devils out of men, and the conferring of the Holy Spirit upon them by the laying on of hands, as the Apostles did, and as bishops and priests who occupy their places, now do. There are many other graces similar to these, which men receive through the seven gifts of the Holy Spirit, whenever God wills, which are the following, namely: the knowledge and understanding of spiritual matters, the spirit of

counsel and of fortitude, the spirit of science and piety, and the spirit of the fear of God; wherefore the above-named things cannot be bought or sold in word or in deed, for any price which may be given. The Sacraments, offices, livings, benefices, tithes, and cemeteries and the right of being buried in them, as well as that of receiving money, by agreement for masses on anniversaries; these matters, and all others similar to them, are of this character.

The second class of spiritual things includes many kinds, for some are so called because men are saved by their means; as, for instance, those who receive the Sacraments of the Holy Church. Others are designated spiritual for the reason that they receive the gift of the Holy Spirit through them; as, for instance, the orders which priests confer upon ecclesiastics. There are still others which are given to those who perform service in spiritual matters, such as the benefices of the Holy Church, and other rights and privileges which men enjoy by reason of their connection with her. None of these spiritual matters stated above to belong to the second class can be lawfully sold, although some persons actually purchase them, and this is manifest simony. Those who receive the Sacrament in this way, will not be saved by means of them; except in case of marriage, where a price is given and received, for this will be valid and is not a sin, so far as the price is concerned.

The third class of spiritual things includes the blessing of chalices, crosses and other sacred property of the church, as well as the other ornaments necessary for its service, and these, although they are of a spiritual nature, can be bought and sold in the way stated in the Title which treats of the property of the Church, and how it can be disposed of, in the law beginning: "Prelates have the power to alienate."¹

LAW II.

Why Those Who Sell Things of a Spiritual Nature Are Called Gehazites.

A servant of Elisha the prophet was called Gehazi, and he was the first person who committed simony in the Old Testament, when Naaman came to Elisha, the prophet, to be cured of his leprosy, and he ordered him to go to the river Jordan, and wash himself in it seven times and he would be cured; and Naaman did this according to the order of the prophet and was healed; and, after he did so, he returned to Elisha to thank him for the favor which God had done him through his prayer, and to make him presents from his wealth, but Elisha was unwilling to accept anything from him. Then Naaman went away, and afterwards Gehazi went, without the order of Elisha, and asked him to give him something, and he gave him two changes of garments and a mark of silver, and Gehazi returned and hid what he had given him; and soon afterwards Elisha learned it by means of the Holy Spirit, and, when Gehazi came before him, Elisha said "Because thou hast received a reward for the grace of God which he showed to Naaman in curing him of his illness, let there come upon thee the same leprosy which he has lost;" and this at once took place in the way stated by the prophet. Therefore it is right that all those who sell things of a spiritual nature should be called

¹ The practice of simony was almost universal during the Middle Ages, and no ecclesiastical assembly, from the synod to the conclave, was free from it. Indeed, it was so common that a regular schedule of prices—as well defined as that controlling the imposition of penances, and the granting of dispensations for crimes—was established, so that each aspirant for promotion knew beforehand just what his mitre or his cardinal's hat would cost him. The prevalence of the offence caused it to be treated at great length, and with unusual detail, in both the *Partidas* and the Canon Law, and, the severe penalties denounced against the guilty by both, had no other effect than to induce the latter to use greater caution. The general terms of the two treatises are very similar, as is shown by the following concise and comprehensive definition from the Canon Law: "*Simonia est pactio circa spiritualia vel eis annexa, ut promovere negotium, spe beneficii Ecclesiastici promitti.*" (Corp. Jur. Can. II Loc. Com. Tit. Simonis.)—Ed.

"Gehazites," on account of Gehazi. And, although, in the beginning, a distinction was made between those who purchased, and those who sold things of a spiritual nature, (as has been stated), both of them are now called simoniacs. And this is why men used to say that those who received a price for things of a spiritual nature are more properly called "gehazites," and those who purchase them, simoniacs.

LAW III.

In How Many Ways Simony Is Committed.

There are three ways in which men commit simony. First, by making use of their own bodies. Second, by bestowing gifts and presents. The third is committed by means of words in prayer. The first of these occurs when the priest makes a contract with a prelate that he will serve him with his own body, in consideration of his conferring a benefice, or holy orders upon him. And even in this service a distinction exists, for it is either corporeal or spiritual: and if it is corporeal, and proper to be performed, and is not done under a specified agreement, he who renders the service is not guilty of simony; as, for instance, if he should go to Rome for his prelate, or should act as his representative or his advocate, by assisting him in his lawsuits or in those of the church; for in consideration of services of this kind, and others like them, he is entitled to receive orders and benefices, where he who performs these services is a person who deserves to have them. But it is necessary that the prelate should not give them to him especially on account of the service he rendered him: nor, on the other hand, should he obtain them in that manner, although he may have hopes of receiving some mark of favor from that prelate. But where he who renders the service is a person of such a character as not to deserve orders, or a benefice, although the matters with regard to which he performs the service are reasonable, he cannot have them except through simony; since they are given to him on account of that service, and, at the same time, he does not deserve them. This will be the case also where he deserves to have them, and the things with regard to which he performed the service are improper. If the service is of a spiritual nature it cannot be done by agreement, for he who renders it, will, by this means, incur the guilt of simony, unless he should be compelled to render it for some of the reasons stated in the Title concerning Benefices, in the law which begins with: "A prelate should not make any condition or contract:"

The second kind of simony is when persons receive service, money, presents, or gifts, in return for things of a spiritual nature, as, for instance, benefices, holy orders, and other things of this kind; for he who gives as well as he who receives such things as these under an agreement, commits simony. There are, however, six ways by means of which men can give something for things of a spiritual nature, and neither he who gives, nor he who receives them will be guilty of simony. The first is, where a person receives any of the Sacraments of the Holy Church, or anything else of a spiritual nature, and, of his own free will, desires to give something to him from whom he received it, the other not having asked him for it. The second is, where anyone gives or receives donations or presents which are suitable and right to be received; and for these to be of this kind, and for him who gives, as well as for him who receives them to avoid committing simony, the following matters should, in the first place, be carefully considered: namely, what kind of a man it is who makes the gift, whether he is poor or rich, and also whether he who receives it is poor or rich; what it is that he gives; whether he who receives it has need of it or not; whether the poor gives it to the rich; and whether the gift

is of great value, or given at a time when the prelate was not in need, for, in case he did need it much, suspicion might arise against him who gave it that he did so to obtain something by means of it, and where it is of a spiritual nature, it would be simony. This would be the case where a priest gives his bishop a mule or a horse, or some other gift of considerable value, in order to obtain a benefice or something else of a spiritual nature; but where one rich man makes such a present to another who is rich, or one who is rich gives a present to one who is poor, knowing that he has need of it, and influenced by good intentions in giving it, it could in no way be suspected that he was guilty of simony, or did this for any improper reason. The third way is, when ecclesiastics receive chaplains to say the service for them; for persons of this kind who render services to others which they are not required to do, are entitled to receive compensation for them without being guilty of the sin of simony: and the same rule applies to other cases of this kind. The fourth way in which compensation can be received in return for things of a spiritual nature, although the parties are required to perform them by reason of their office, is when bishops consecrate, or visit churches, for they are entitled to receive their fees; and this is on account of the labor they perform in doing this. The fifth way is, when anyone gives something by way of alms, in order to obtain Paradise, which is of a spiritual nature, or to secure pardon for his sins. The sixth is, when a priest, does something unlawful which relates to his benefice, and gives something in order that he may be left in peace.

The third kind of simony which is committed by speech, is when men beseech prelates to ordain, or give benefices to, certain priests, for it happens very often that simony is implied by a request of this kind; and a distinction is made here in this way, namely: where a request is made to give a benefice to anyone or to ordain him, whether the party makes the request for himself, or another does so in his behalf, it may be that he is a person who deserves it; and if he does deserve it, and is worthy of having it, there is no simony in a request of this kind; but if he should not deserve it, or not be worthy to receive the benefice, or the orders, and they are given him, he will obtain them through sin, and it will be simony, because the request was neither just nor proper. If, however, anyone should ask that an office or a church be given to himself, as, for instance, a bishopric, or some other living, such a request is not a good one and should not be entitled to any consideration whatever, and the request should be rejected as that of a covetous person.

LAW IV.

What Requests Are Called Carnal, or Spiritual, and by Means of Which of These Men Commit Simony.

The requests which men make for one another, are both carnal and spiritual. Those are carnal where they are impelled by relationship or friendship, more than by any other motive, toward those in whose behalf they make said requests. However, there is a distinction among requests of this kind, for they may solicit for a man who may be deserving, or not; and if he in behalf of whom the entreaty is made has a living or an office, a request of this kind is proper. But the prelate who is to make the donation should not pay so much attention to the petition which is made, as to the person of him in whose behalf it is offered, as well as to the benefit of the church which has to make provision for him. Where the request is made on behalf of a man who does not deserve it, and by its means he obtains an office or a living, both he who gives the benefice—if he knows that he to whom he gives it is not worthy—as well as he who makes the request for him, commit the sin of simony, for

a request of this kind is considered as implying a price. Spiritual requests are such as are made on behalf of men between whom and those who make them no relationship exists, but the latter are induced to act through kindness towards them: and by a request of this kind, no one can be guilty of simony, or of any other sin.

LAW V.

What Presents Prelates Can Receive Without the Sin of Simony.

Prelates can receive presents of food and drink without being guilty of the sin of simony, only they should not be of a very great value, and should be such as can be speedily consumed, as pitchers or bottles of wine, or birds, fish, fruits, or other things like these, which are insignificant in value. This is the case that men may not be induced to give something of a spiritual nature in return for such presents. If, however, any person should bestow a gift or a present, whether large or small, with the intention of obtaining something spiritual by means of it; or if he who received it should give something of this kind by reason of such a service; each of those who acted in this way, will commit the sin of voluntary simony, for the reason that there was no agreement entered into in the transaction. Wherefore, he who receives an order, a benefice, or anything else of a spiritual nature, in this way, is entitled to retain it, and there is no reason he should relinquish it, but he must perform Penance for the error which he committed, because he obtained it in this manner. But whenever anyone gives little or much, in an agreement which relates to something of a spiritual nature, he commits simony for this reason, and should not have that for which he gave a consideration. Where anyone is accused of having committed the sin of simony, and a doubt arises whether he did so according to agreement, or voluntarily, his superior, whose duty it is to settle the dispute, should carefully consider and examine those matters mentioned in the fourth law preceding this one, which prevent a man from committing simony, and settle the dispute according to what is there set forth.

LAW VI.

What Priests Should Not Take Security From One Whom They Desire to Elect, Before He Is Elected, in Order to Avoid Being Guilty of Simony.

Electors should take no security, or pledge, from him whom they desire to choose for some church, before the election is held. For if they should enter into any contract with him beforehand, which will affect the church or its affairs in any way, in case he should be elected, both he and they, for that reason, will be guilty of simony. But after the election is over, if an ancient custom existed whereby a priest is obliged to take a suitable oath, or give some security instead, the electors have a right to accept it of him. However, the prelate who was his superior during this election has a right to demand of him the security of the oath, or of any other agreement which is proper, and receive it from him, either before or after he ordains, or consecrates him; for the power of the superior has such force in this matter that it prevents the party from being guilty of simony. Moreover, he commits simony who releases anyone from a debt, by means of which he acquires something of a spiritual nature; and he also commits it who gave him something for the sake of obtaining this. Where any person gives something of value in order to be absolved from excommunication, or from some other sentence, he who receives it commits simony.

LAW VII.**No Priest Should Conceal From His Bishop the Manifest Sins of His Parishioners, on Account of Anything Which They Give Him.**

Where any priest ignores, or conceals any of the sins of his parishioners from the bishop, or from anyone who occupies his place, and accepts anything for doing so, he, for that reason, commits simony, if the sin was one that was known. This rule will apply where he omits to mention a sin, or palliates it, on account of relationship or friendship existing between him and the other party, and also where a priest brings one of his parishioners before the bishop, to have him do him the favor to reconcile him, stating that he has performed Penance, and testifying to it, where this is not the truth, or where he performed Penance not so fully as he should have done. The case is similar where a person performs Penance properly, and the priest, influenced by ill will against him, prevents him from being reconciled. Even if he who committed any of these three above-named acts, did not receive anything from him with whom he has relationship or friendship, and in whose behalf he acted, or where, on account of the dislike which he entertained towards the party aforesaid, he prevented him from being reconciled by concealing the truth; in either of these instances the Holy Church holds that these things take the place of a consideration, and therefore he who commits such acts is guilty of simony. Archdeacons as well as archpriests, and also the priest who has the care of souls in any parish church, are bound to reveal to their superior, or to whomever occupies his place, all sins which are open, if they cannot cause them to be corrected.

LAW VIII.**For What Reasons Prelates Cannot Lease Their Authority, or Appoint Vicars for the Sake of Reward.**

A prelate cannot lease his authority, or appoint vicars in his stead for reward; and this is the case for three reasons. First, because it would annoy his inferiors, for it must happen that those who lease a place, will sometimes render bad decisions, or take something from men unlawfully, in order to make up the rent which they have promised to pay. The second reason is, the vicar who is assigned to a church should be appointed for his whole life, and should have the care of souls, unless he does something for which he deserves to lose his position. Wherefore, no person should promise or take any reward, on this account, and he that accepts one, as well as he who gives it, commits simony; but a place of this kind should be bestowed without reward and willingly: and the prelate should also give the party whom he appointed something on which to live. The third reason is, that prelates should render judgment openly, and beware of defiling their hands by accepting anything from men on account of the decisions which they render. This care cannot be easily taken if they lease their authority to render judgment; for it would rather appear that they sell their decisions, and act in opposition to God and to the law which forbids them to be given for reward.

LAW IX.**Priests Can Lease the Revenues of Their Benefices Without Being Guilty of Simony.**

Prelates should not appoint vicars for the sake of reward, for this would be simony, as stated in the preceding law. But they, as well as other priests, are authorized to lease the revenues of their churches and their benefices, for

although these are derived from spiritual things, they themselves are not so; and therefore neither he who sells, nor he who buys them, commits simony. A lease of this kind will not be valid for the lifetime of the lessee, but for the lifetime of the party to whom the benefice belongs, and no longer. When a priest rents the revenues of his benefice for a certain time, and dies before that time has elapsed, the lessee cannot receive those revenues for a longer period than the priest who holds the benefices can do: nor can he demand that the church reimburse him for the expenses which he has incurred by reason of his lease, nor for the maravedis which he may have overpaid. For as neither the priest, nor those who inherit his property, are entitled to receive the revenues of the church after his death, so he to whom he leased them should not have them either; but the lessee can make a demand upon the heirs and the sureties of the priest to reimburse him for what he has overpaid, and the expenses which he has incurred by reason of the lease, provided the priest left other property out of which this could be paid, and which did not belong to the church. The same rule applies where the priest did not have any heir to inherit his property, and the church inherited it, for then it would be required to make the payment.

LAW X.

Masters Should Not Sell Their Knowledge for Reward, Nor Should They, Moreover, License Scholars to be Masters for a Consideration.

Science is a gift of God, and therefore should not be sold, for as those who possess it obtain it without price, and by the grace of God, so they should give it to others willingly, not accepting anything from them in return for it; for which reason when a master receives a benefice from some church, in order that he may open a school, he should not afterwards ask anything from the priests of that church, or from other poor scholars; for, if he should ask or accept anything, it will be the same as simony. But masters who do not receive benefices from churches are entitled to accept pay from scholars whom they teach, if the income they receive from other sources is not sufficient for them to live honestly; but if it is sufficient, they should not ask anything of them, but teach them through pure good will. Where, however, scholars give them something of their own accord, they not requesting it of them, they are entitled to accept it without being misjudged. This is understood to refer to masters who are learned and intelligent enough to give instruction; but where they are not so, although their incomes may be insufficient, their scholars are not required to give them anything because of any obligation incurred, for the reason that they do this rather for their own benefit, that they themselves may acquire knowledge, than to teach others.

Moreover, those who have authority to grant licenses to scholars to become masters, should not do so for a compensation, and if they do this, although they are not guilty of simony, they will, for this reason, commit a great sin, called, in Latin, *crimen concussionis*; which means something of the nature of a threat which powerful men fraudulently make, in order to obtain money from others, by bringing some accusation against them. For which reason anyone who does this, and is convicted of it, should lose the dignity, office, and benefice which he had from the church.

LAW XI.

What Punishment Those Should Receive Who Commit Simony.

A person who commits simony is called a simoniac; and for the reason that it is a very serious and atrocious sin, the Holy Church declares what

penalty he should undergo who commits it, and this is defined in the following way, namely: where a priest, on account of his desire to be ordained, receives a holy order through simony, he is forbidden by law to use the order which he received in this way, even though his prelate may not have forbidden him, by a sentence, to do so, and as soon as his bishop, or other prelate who has the right to judge him, knows certainly that he has committed such a sin, he can depose him. A bishop who ordains a priest for a compensation should also suffer the same punishment. But where a priest commits simony with regard to any dignity or living which is given him, or with respect to any other benefice which carries with it the care of souls, and he is accused and convicted of it, he should forever be deprived of his office and of his benefice. If the bishop should not learn this through an accusation, but through an investigation which he set on foot against him, under these circumstances he should not be suspended from his office or his benefice, but the office or benefice or what he obtained in this way should be taken from him: and this is the case because he could not perform Penance for this sin while he retained his office.

He who obtains by simony a dignity or other benefice, which carries with it the care of souls, is forbidden to make use of the office connected therewith. And whatever acts he performs with reference to the said prebendship or benefice, he does as a suspended man who has no right to act. Where, however, he absolves any persons or those under his jurisdiction and imposes Penance upon them, or administers the other Sacraments, they are legally absolved by his action. This is the case on account of the belief which they have in the Sacraments, and because they consider him their prelate, and think that he has the power to do these things, not knowing that he obtained that power through simony; for, if they did know it, they should not receive any of the aforesaid Sacraments from him, unless they believe themselves to be in imminent danger of death, for then such persons are entitled to receive Baptism, Penance, and the body of Our Lord.

LAW XII.

What Punishment Ecclesiastics Are Liable to, Who Obtain Simple Benefices for a Consideration Which They Give for Them.

A benefice is called simple which does not include the care of souls. Wherefore, if any ecclesiastic should pay a price to obtain such a benefice, and this were done in secrecy, so that no one knows it, he must, by way of punishment, be suspended from the order which he had, for he has no right to make use of it any more than if he had committed some other mortal sin, but if he does make use of it, the Sacraments which he administers will be valid. Where many are aware of this, and he is convicted of it in court, he is forbidden to conduct the service, nor should others hear him conduct it; and after a priest has been accused of simony, and while the suit is pending, he should not make use of his order. This also should be observed in the case of a prelate, who gives any benefice, great or small, for a reward. Moreover, a priest who obtains a benefice through simony should lose it, and return all the revenues which he collected from it, as well as those to which he was legally entitled, to the church to which the benefice belonged which he obtained in this way. The prelate, and anyone else whosoever, who receives a reward in a case of this kind, should undergo the same penalty: for they must return all such sums to the church where the priest received his benefice.

Priests who commit simony are subject to still another penalty, for they become infamous on that account, and should have no benefice in the Holy Church until a dispensation is granted them.

LAW XIII.**What Penalty Those Are Liable to, Who Give or Receive a Consideration to Enter a Religious Order.**

Things of a religious nature should be bestowed freely, and not for the sake of reward: wherefore, anyone who desires to enter a religious order should not give any consideration, by way of agreement that he may be received into it, nor should anything be accepted from him: for where parties act contrary to this regulation they are guilty of simony, both he who gives, and those who receive it, and when they are accused of this and convicted in court, all of them should be deposed; but where it is learned through an investigation made for that purpose, all those who are implicated in this manner, should be removed from their monasteries, and placed in others of more severe discipline, where they may perform Penance for their sin; and whatever was given in this way, should be delivered to the monasteries where the delinquents were sent, in order that they may not be oppressed by the expenses incurred on account of said persons. The superiors of the monasteries who received the reward, whether they are men or women, should have severe Penance imposed upon them by their prelates, and should not make use of their holy orders, until that Penance has been fully performed.

LAW XIV.

To What Penalty Prelates Are Liable Who Place Churches Under Interdict While They Are Vacant, in Order That Something May Be Given Them, or Who Prevent Men From Receiving Religious Service, or Burial.

Prelates sometimes maliciously place churches under interdict while they are vacant, in order to hinder those who have the power to appoint priests to conduct the service in them, until some compensation is given; and those who receive anything under such circumstances commit simony. Moreover, it happens, at times, that some men desire to enter a religious order, or select their burial places in certain monasteries, or in other churches, and the prelates of those establishments prevent them from doing so, in order to collect something from them: and, where they act in this manner, they commit simony. When such persons receive anything in this way, they should, like those above mentioned, return double the amount to the churches or monasteries where they placed this hindrance.

LAW XV.

For What Reasons Men Can Give, or Receive Something Without the Sin of Simony, Where a Custom of This Kind Prevails.

A custom prevails in certain localities to give something to the priests when the dead are buried, or persons are married; as for instance, tapers, money, bread, wine, or something else, and, moreover, towels, water jugs, and other articles of this kind, are given at the consecration of bishops. And although, for these reasons, men give something, as above stated, they should, nevertheless, not be required to give, as it were, through compulsion. But in those places where it is a practice to give such articles, and the custom is such the prelates of those localities should officially cause this custom to be carried out and observed. Although the above-mentioned things are of a spiritual nature, men are justified in giving something in return for them for the reasons previously stated, and neither those who give, nor those who receive them, will commit simony.

LAW XVI.**In What Cases Priests Cannot Excuse Themselves for Committing Simony, Where They Accept Anything Under the Plea of Custom.**

Where priests demand, or accept, something in return for matters of a spiritual nature, they cannot protect themselves from the guilt of simony by alleging that such is the custom; as, for instance, when they create a bishop, an abbot, or an abbess, for the first time, and induct them into their seats; or when they invest priests with the benefices which they bestow upon them; or receive a canon or a prebendary into their society; as in none of the instances aforesaid, nor in consideration of the Sacraments—excepting in the cases mentioned in the preceding law—should anything be demanded by saying that it is customary to give it. Whoever acts contrary to this regulation by making a demand, will, if he accepts anything, be guilty of simony, for that reason. Moreover, a bishop will commit simony, if he receives an oath or a promise from any priest, before he ordains him, that after he is ordained, he will not ask a benefice or any other property from him on which to live, in consideration of the orders that he has conferred upon him. An archdeacon, an archpriest, or any other ecclesiastic who presents a candidate for the place, will commit the same sin, if he takes an oath or makes a promise in the manner aforesaid. Such as violate this regulation shall undergo the following penalty, namely: the bishop or prelate who ordained him shall be prohibited from giving orders; and he who presented the candidate, shall be forbidden to make use of the orders which he has, for the space of three years; and he who receives an order in this way should not make use of it until the Pope grants him a dispensation.

LAW XVII.**On the Difference Existing in the Simony Which Is Committed Where Men Give, or Receive Something in Return for Spiritual Matters, and Which of Them Are Simoniacs.**

The Holy Church states and shows that simony is committed sometimes on the part of him who gives the benefice or the order, and sometimes on the part of him who receives it, and sometimes committed by both of them, and sometimes by neither. It is committed by him who gives the benefice, or the order, and not by the priest, when something is given to the bishop, as a consideration, and the priest does not know by whom it is given, but if he should learn afterwards, he is required to relinquish the benefice which was given to him in this way; if he had received a holy order, he should not make use of it; and where he is elected to an office his election is not valid; unless those who make the donation do so with evil design, in order to embarrass him, or where they act contrary to his prohibition, he having previously requested them not to, or forbidden them to do so; and this should be understood to apply where he does not afterwards ratify what the others do, by paying the price which they gave or promised.

Simony exists on the part of him who receives the order or the benefice, and he who gave it to him is not implicated, when the former pays some one to procure it for him, and the prelate is not cognizant of this. A person of this kind is also required to relinquish the benefice, and not make use of the order which he has received in this way.

LAW XVIII.

In What Way Both Parties Commit Simony, Not Only He Who Gives, But Also He Who Receives Something of a Spiritual Nature; and, Moreover, How One Is Not Guilty of it Although He Commits the Act.

Both he who gives the order or the benefice, and he who receives it, commit simony, when the party who desires to obtain it gives something, or promises to give it, that the prelate may be induced to bestow it upon him for this reason. This is also the case even if the bishop should neither give nor receive it, provided others give it and both parties are cognizant of the fact, or where something is promised, and afterwards is paid to the bishop, or to someone else by his order; for each one of them is liable to the same penalty as a person who commits simony. And it may happen that neither he who gives the benefice or the order, nor he who receives it, commits simony. This is the case where a party, without the knowledge of him who received the order or benefice, makes a donation to persons belonging to the household of the bishop, or to someone else, in order that they may obtain it for him, and the prelate is informed of it; for, in a case of this kind, those who give the consideration, and those who receive it, and no others, commit simony.

LAW XIX.

Who Has Power to Grant a Dispensation to Those Who Are Guilty of Simony.

Those who are guilty of the sin of simony require a dispensation, for priests who obtain a benefice or an order in this way can neither use the order, nor hold the benefice, unless a dispensation is granted them. For this reason the Holy Church deemed it proper to show who can grant a dispensation to persons of this kind; and she ordered that all those who gave anything to their bishops in order that they might ordain them, could not receive a dispensation from anyone except the Pope, as is stated in the Title concerning bishops, in the law which begins with: "They can have the pallium." But where simony was not committed by the bishop, or by the person who received the order, as stated in the preceding law, under such circumstances his bishop has a right to grant a dispensation to that priest, as is stated in the above-named Title, in the law which begins with: "He who commits simony."

Where simony is committed on account of a dignity, or a living, or some other benefice having the care of souls, he who gained it in this way should relinquish it, and no one can grant him a dispensation except the Pope. This is also the case where a person acquires a simple benefice by means of simony, which he himself committed, or someone else did for him, he being at the time cognizant of it. But where another party did this, and he was not aware of it, the bishop has authority to grant a dispensation to the holder of the benefice, if he had previously abandoned it.

LAW XX.

In What Cases the Holy Church Permits Bishops to Grant Dispensations to Simoniacs.

The Holy Church permits bishops to grant dispensations in all matters not expressly forbidden them. For this reason, since they are not prohibited from granting dispensations where simony has been committed in affairs of minor importance, and in which there is no great risk, it is understood that in cases of this kind permission is granted then to do so: as, for instance, where

persons commit simony by collecting something for burial; or for performing the service of the dead; or for blessing newly married persons; or for selling a burial plot in a cemetery; or where archpriests collect something from priests when they give them the chrism for the churches; or in return for blessing bishops; or for consecrating the property of the church, as, for instance, chalices, vestments, and other things of this kind. Moreover, a bishop can grant dispensations to priests who have committed simony by accepting gifts from their parishioners for doing things which they are required to do by reason of their office; as, for instance, for conducting the service, or administering the Sacraments. Some men even commit simony in their minds, and this is the case when a priest gives all he possesses to some church without any agreement or condition whatever, but gives it because he desires to be received as a canon, or a companion, and for this reason he is guilty of the sin of simony; and those who receive the property, if they do so with the intention of obtaining what the priest possessed, and did not receive it by chance, or did not bestow the benefice except with this motive, are guilty of simony. However, he, as well as they, have no need of a dispensation from the Pope, or from their bishop: for simony of this kind is only removed by Penance, which each one of them should perform under the direction of his priest to whom he confesses the other sins that he commits, and he who acquires a benefice in this way is not required to relinquish it.

LAW XXI.

What Penalty Should Be Inflicted Upon Brokers Who Act As Intermediaries Between Persons Who Commit Simony, and Who Has Authority to Grant Them Dispensations.

Those persons are called brokers who act as intermediaries between different men when they desire to make an agreement or contract. Persons of this kind when they act as agents for those who commit simony by giving or taking compensation for something of a spiritual nature, are, for that reason, simoniacs, and moreover of bad repute. Where either those who gave the consideration, or those who received it, are accused, the latter cannot be witnesses against the former, although they can accuse them of this sin if they desire to do so: and he has authority to grant dispensations to these intermediaries who has power to grant it to the others between whom they carried on their brokerage, by means of which the sin of simony originated, of which both are guilty.

TITLE XVIII.

On Sacrilege.

Every Christian who does not protect and honor the Holy Church is guilty of great audacity. This is the case for many reasons, for she is our spiritual Mother, showing us, and guiding us along the way of salvation for souls: and she is our Mother in temporal matters, for she instructs us, and advises us to do good, and to avoid doing evil, therefore we should honor and protect her as a mother; and besides, as we are corporeal, born of our mothers, still, so far as our souls are concerned, we do not obtain salvation for them unless we perform works by means of which we may acquire it. But from the Church, which is our spiritual Mother, we receive good life in this world and in the next, and for this reason we should honor and protect her more than anything else, so that no one may dare to do her wrong, or use violence against her, or her cemeteries or other property; for in the same way as simony is the purchase of something which is spiritual, so sacrilege is to be guilty of some wicked violence against the Church, or her cemeteries, or her property.

Since in the preceding Title we treated of simony, how it is committed, and by means of what things men become guilty of it; it is suitable to speak in this Title of the sin called sacrilege, and show what sacrilege is, whence it derived its name; in how many ways, and in what things it is committed; what penalty he deserves who commits sacrilege, and also who is entitled to receive reparation for it, and what all the other matters are which pertain to this subject.

LAW I.

What Sacrilege Is, and Whence It Derived This Name.

Sacrilege, according to the law of the Holy Church, is the injury of something sacred, or of something else which belongs to it, wherever this may be, and of whatever is in a sacred place, although it itself may not be sacred. Priests, and persons belonging to religious orders, whether they are men or women, are called sacred; and this is on account of the orders which they have taken, and the religion they maintain. Churches, chalices, crosses, altars, and the ornaments of the Holy Church are also styled sacred, because they are made for the service of God and are holy in themselves, on account of the works which are performed by means of them; and, even leaving this out of consideration, most of them are consecrated by the bishops. Moreover, it is sacrilege to use anything which belongs to God, or anything else whatever which is sacred. The name Sacrilege is derived from the word *sacrum*, which means something holy, and from *laesio*, which means an injury; wherefore sacrilege means to take some holy thing unlawfully, or to injure it, or to commit injury inside of it.

LAW II.

In How Many Ways Sacrilege Is Committed.

Sacrilege is committed in four ways. First, when anyone lays violent hands on a priest or a person belonging to a religious order, whether it be ecclesiastic or layman, man or woman. Second, by stealing, or by removing by force, something sacred from a holy place; as, for instance, where anyone

steals, or forcibly removes chalices, crosses, vestments, or any of the ornaments or other property which belong to the church and its service; or where anyone breaks in the doors, or pierces the walls, or the roof, in order to enter a church and commit injury, or to set it on fire in order to burn it. Third, when anyone takes by force, or by stealth, anything sacred from a place which is not holy, and this occurs where a person removes or steals, or forcibly takes a chalice, cross, vestment, or other ornament belonging to a church, or removes them from some other house where they are placed for safe keeping. Fourth, where property which is not sacred is removed from a holy place, by stealth or forcibly; as where anyone, in either of these ways, removes bread, wine, or any other articles, which some person has placed in a church for safety, as, for instance, when men take their property to a church in time of war, that they may not lose it by theft or robbery. A distinction exists between theft and robbery, for theft applies to what is taken stealthily, and robbery to what is taken openly by violence.

LAW III.

Upon What Things Sacrilege Is Committed

There are certain things upon which sacrilege is committed, as, for instance, the persons of priests or others of the clergy. It can, moreover, be committed in certain places, as in churches or upon other property belonging to them, which are their ornaments, and in their towns, and on their lands, and upon other property which the church holds, whether movable or immovable. Sacrilege can also be committed upon the person, as when anyone in rage strikes a priest, or other member of the clergy, or arrests him, or puts him in jail, or in any other kind of a prison, or keeps him under restraint, against his will, in any other way, although he may not be a prisoner; or pushes him or robs him, depriving him of his clothes, or of anything he wears; and this also applies to anyone who orders it to be done. Sacrilege is also committed in certain places, as where anyone defaces a church or a cemetery, committing there any wickedness such as is mentioned in the preceding law. Moreover, sacrilege is committed upon the property of the church, when anyone appropriates it, or enters upon it contrary to law, or does any injury to it, whether it is sacred or not.

LAW IV.

What Penalty Those Who Commit Sacrilege Deserve.

Excommunication and fine are the two penalties which the Church inflicts upon those who commit sacrilege. The excommunication, however, is understood as follows, namely, where anyone lays violent hands upon a priest or any other member of the clergy, or does any of the things mentioned in the preceding law, or which are set forth in the Title concerning Excommunications, he stands excommunicated for that sole act; and it is not necessary to excommunicate him again for the same thing, except that it should be made known to the churches that he is excommunicated, in order that persons may avoid associating with him. But if he should do something else on account of which he would be guilty of sacrilege, he should not be excommunicated until he has been warned to make reparation for it, and if he should refuse to do so, then he should be excommunicated.

LAW V.**For What Kinds of Sacrilege the Penalty of Fine Can Be Imposed, Which Those Who Committed It Must Pay.**

Surrender of property is the other penalty, to which those who commit sacrilege are liable, as above stated. This is divided into many kinds dependent upon the act; for if a man of distinction, as, for instance, a nobleman, a prince of the blood, or a knight, should wound a bishop, or arrest him, or drive him by force out of his church, or from the city where he was bishop, or from his bishopric; unless this was done through a sentence of the Holy Church by which he was ordered to expel him, any person of this kind who commits any of these acts in any other way, will be guilty of sacrilege, and, according to the ordinances of the Holy Church, should lose all his property, which will belong to the church where he who was wounded, or imprisoned, or restrained of his liberty, held the office of bishop; subject to the rights of his lord, his wife, and his children. Moreover, where any man wounds any other ecclesiastic, who is not a bishop, or arrests him, or drives him from the church, and does this unlawfully, he is guilty of sacrilege. Where he is a man who holds an honorable position, as above stated, the Holy Church decreed that he should lose that position, and that he should be denounced as excommunicated besides; until he makes reparation to the church and the priest for the wrong and injury which he committed. Where a man of inferior rank, who did not occupy an honorable position, does this, he should be denounced as excommunicated, until he makes reparation to the church and the priest, as above stated; and besides this he should be imprisoned, or banished from the dominions of the lord of that locality, for as long a time as the latter thinks proper. This rule will also apply where anyone commits any of the aforesaid acts, against a member of the clergy, whether it be a man or woman.

The punishment of sacrileges of this kind, as stated in this law, rests in the discretion of the judge, who should consider the condition of the man who committed them, and that of the other party against whom they were committed, as well as the locality where they took place; and, according to all this, he should make the fine large or small. Where the amount of the fine is fixed by custom in that country, or in the locality where the act was committed, the judge ought to observe the custom, and order the said amount to be paid.

LAW VI.**What Penalties Those Who Take Nuns From Monasteries, in Order to Sleep With Them, Deserve.**

Where a man, for himself, or for any other man, takes a nun, or any other woman belonging to a religious order, in order to sleep with her, removing her by force from her monastery, or from any other place, or has intercourse with her by force, or with her consent, he commits sacrilege. Where an ecclesiastic acts in this manner he should be deposed, and a layman should be excommunicated, where he is not willing to make reparation for the sacrilege and the wrong which he did to the monastery where the woman belonged, and this is understood to refer to the sentence of the Church.

Where a woman leaves a monastery, no one removing her therefrom, they must cause her to be sought for, as soon as the bishop, or other prelate who has that establishment in charge, learns of the fact. The judge of that district must also assist in seeking for her, and in bringing her back to the place she left, if this is necessary. This, however, is understood to be the case where the monastery is not to blame in not watching her as it should have done; for if,

through carelessness in watching, she was carried away, or went of her own accord, she must be transferred to some other monastery where she will be better guarded, along with the income of her property which was given with her to the first monastery; and the monastery to which she was taken will be entitled to said income during her life, and no longer.

LAW VII.

What Punishment He Is Liable to, Who Kills a Priest or Other Person Belonging to a Religious Order.

Where anyone wrongs or injures a priest in his person, he should make reparation, as is stated in the third law preceding this; but where he kills him, he is liable to other punishment, for if he kills a priest qualified to say mass, he must pay for the sacrilege six hundred sueldos. If he kills a priest who is a Reader of the Gospel, he must pay four hundred sueldos; if he kills a Reader of the Epistles three hundred sueldos; if he kills a nun, or any other person belonging to a religious order, he must pay four hundred sueldos; and if he kills a bishop, he must pay nine hundred sueldos, and by sueldos maravedis are understood.

LAW VIII.

What Penalty a Patron, or Anyone Else Who Holds Landed Property Belonging to the Church Is Liable to, if He Kills or Wounds the Prelate or Any of the Other Priests Belonging to the Same.

Where the patron of a church, or any other man who holds landed property or any income from it, wrongfully kills, or orders to be killed, the prelate, or any other priest belonging to said church, or cuts off one of his limbs; if he is a patron, he must lose his right of patronage, and if he is anyone else who enjoys any benefit resulting from the church, he shall lose it, and none of his heirs should ever possess it. In addition to this no son or grandson of the party, who did such a thing, or ordered it to be done, or anyone descended in a direct line from him, to the fourth generation, should be a priest; and if the said party enters an order, although he can be a priest, he cannot be an abbot or a prior, unless the bishop of that diocese grants him a dispensation; and he must endure these disabilities in addition to the fine for sacrilege.

LAW IX.

For the Commission of What Sacrilege Men Deserve Corporal Punishment or Confiscation of Their Property, and for What They Deserve Both.

Any person who damages a church or a cemetery, in any of the ways mentioned in the second and third laws of this Title, whoever he may be, is guilty of sacrilege and deserves to be punished for it. This would be the case where a slave takes refuge in a church, through fear of his master or any other man whomsoever, for he would be safe there, and no one can take him from it by force, and whoever does so must pay the church which he dishonored, nine hundred sueldos; and this also applies where he does not remove said slave but wounds him while there. Where anyone enters a church, while the hours are being said, and wounds or kills any of the priests or laymen who are there listening to the service, and he should be accused and convicted before a secular judge, or it should be publicly known that he committed the act, he should be put to death for it; and anyone who kills any of the said persons, while the service is not being conducted should suffer the same penalty. Any person who commits one of the above-mentioned acts at the portals of a church, or in

its cemetery, is liable to the same punishment. For men who go to church, or take refuge there, should be safe in all these places while they are in them; except such as commit some of the offences mentioned in the Title which treats of the exemptions which churches and their cemeteries enjoy.

LAW X.

To What Penalty Those Who Damage a Church Are Liable; Who Has a Right to Demand the Penalties for Sacrilege, and How They Should Be Divided.

Men who take refuge in a church, or who resort to it, and all property placed there, should find protection and security within its walls. For it is a very insolent and atrocious thing to employ force or commit injury in a place especially set apart for sinners to obtain security from God, and men from one another. Wherefore, anyone who kills a man there, or forcibly removes any property, whether it belonged to the Church or to someone who placed it there for safe keeping, is guilty of sacrilege, and for that reason must pay the bishop of that diocese thirty pounds of silver. He must also pay the owner of the property which he removed by force, or broke, or injured, nine times as much, and the church three times as much. Bishops, abbots, and other superior prelates of the church, have the right to demand and receive these penalties for sacrilege, and those which were paid for damage to the Church should be employed for its benefit. Where sacrilege is committed by wounding or killing a priest, the penalty must be divided between the priest who is wounded and the church where this took place. Where he was killed, half should be given to the relatives of the deceased, or expended for the benefit of his soul.

LAW XI.

Concerning Things Which Have the Same Name As, and Resemble, Sacrilege.

Other offences which men commit in deed or word, without reason and without justice, have the name and appearance of sacrilege, in addition to those mentioned in the preceding law. These are not designated, or specifically stated to be sacrilege, but they are faults which approach it, or are very similar to it. This would be the case where anyone commits an offence against the Articles of Faith, which are sacred and the foundation of the holy law, either by not understanding them, or by doing something contrary to them, either through contempt of them, or through negligence or necessity. Moreover, he commits something like sacrilege, who disputes or opposes a decision or ordinance made by the Pope, the Emperor, or the King, by knowingly speaking ill of it. Where any man interferes to obtain the office of judge or any other whatsoever, in the country of which he is a native, this also resembles sacrilege, for the suspicion may well arise that he desires this rather to assist his relatives, and injure those against whom he has a grudge, or to gain some advantage, than to benefit the country, or to render to everyone that to which he is entitled. It would not be sacrilege, however, nor can the suspicion of it arise against anyone to whom the king voluntarily gives an honorable position, thinking that he deserves it on account of his excellent character, or that he would act properly in dispensing justice. It also resembles sacrilege to confer power upon Jews to sit in judgment over Christians, or to receive tolls, or to appoint them collectors of other revenues which Christians are required to pay to the lords of lands, or as rent to them; for, by reason of this, they acquire power over them, and do them much harm and annoy them in many ways. Moreover, it resembles sacrilege where anyone causes sedition among

the people, by assisting them against the king, or the country, in order to create discord in, or commit injury to, the latter. These things are said to resemble sacrilege for the reason that, just as he who breaks or damages sacred things commits sacrilege, so also does he who transgresses, or violates the law of God and the common law by which people are governed.

LAW XII.

What Matters a Judge Should Consider When He Has to Impose a Penalty for Sacrilege Upon Any Man.

A judge should be well informed who has to inflict a penalty upon any person on account of sacrilege which he has committed. For he should consider carefully what kind of a man he is who committed it; whether he is nobly born, whether he is rich or poor, a freeman or a slave; for a penalty should be inflicted in one way upon persons of noble birth, and in another, upon those of inferior rank. Moreover, it should be considered upon what property the sacrilege was committed, whether it was sacred, or not; whether it was committed in a sacred place or outside of it; whether it was committed upon a priest or member of a religious order, and whether he held an ecclesiastical office or not; and it should also be considered whether the sacrilege was committed by day or by night; whether the guilty party was of age, or not; whether he was sane, or not; and whether the person was old or young, man or woman. Judgment should be given by increasing or diminishing the penalty, dependent upon the nature of the offence, the character of the party who committed it, and the property of which it was the object.

TITLE XIX.

Which Treats of First-Fruits.

All those who believe in the existence of one God should feel truly grateful, and, for the reason that He was the beginning and origin of all things, men exerted themselves to serve Him and to give Him His share of the first-fruits which He bestowed upon them. We find that Adam, who was the first man, with his sons Cain and Abel, understood this when they gave to God the first-fruits which they gathered from the earth, as well as those of the beasts which they reared: but for the reason that Cain gave of the worst of his, God was unwilling to accept his first-fruits, but he accepted those of Abel, who gave Him his best.

Since in the preceding Title we spoke of sacrilege, by which men show themselves to be rebellious or arrogant, in opposition to the Church; it is proper that we speak here of first-fruits, by means of which men who give them show themselves to be grateful and obedient to her. We shall explain, in the first place, what a first-fruit is, and who ordered it to be given, in the beginning. Also what men should give first-fruits, and of what things, and in what proportion they should do so; to whom they should be given; how they should be divided, and by whose order; to what penalty those are liable who are not willing to give them; and we shall afterwards also speak of offerings.

LAW I.

What a First-Fruit Is, and Who Ordered It to Be Given.

A first-fruit means the first part, or the first thing which men measure or compute from the crops which they gather from the earth, or from the increase of the beasts which they rear, in order that it may be given to God. For this reason it is called the first-fruit. Our Lord God commanded it, in the first place, to be given by Moses in the old law which is written in the book called Exodus in the Bible, where He commanded him: "Thou shalt not delay to offer first fruits," and also in another place in the same book, He says: "Of the produce of the earth thou shalt take the first-fruits to the house of the Lord thy God;" and also, after this, in the new law, the Holy Fathers ordained that the first-fruits should be given faithfully to the Church of God.

LAW II.

What Persons Should Give the First-Fruits, and of What Things.

The Holy Fathers ordained, in the new religion, that Christians should give the first-fruits, as stated in the preceding law, and ordered that they should give them of the dry produce which they gathered from the earth; as, for instance, rye, barley, wheat, millet, and all other similar crops; and also the first-fruits of wine, oil, and other things called liquors, which mean, in Castilian, fluids, and that they should give of the increase of the beasts which they reared as well. Not only should Christians give the first-fruits of the above named things, but also those of the days in which they live, and, for this reason, they fast on the four Ember Days.

LAW III.**What Proportion Should Be Given as First-Fruits.**

The proportion which should be given as first-fruits is not positively stated in the books which Moses wrote, but St. Jerome said that there were Holy Fathers in the old law, some of whom were accustomed to give one part out of forty, and others one part out of seventy, so that each gave according to his will, from one fortieth to one seventieth. And in order that ecclesiastics might not be impelled to ask a larger proportion, by way of first-fruits, than what is above stated, the superiors under the old law ordained that even though some might desire to ask more, they had no authority to do so.

LAW IV.**In What Way First-Fruits Should Be Given.**

Men breed beasts of which they should give the first-fruits, and for the reason that beasts are of many kinds, men were accustomed to give first-fruits in several ways. Wherefore, the masters who treat of this subject do not all agree: for the old law states that men should give the first-fruits of all their beasts of every description whatever which were first born, but certain of the masters declared that this is something by which men would be greatly inconvenienced: for where a man has not more than two or three head, and has to give one of them as the first-fruit, it would be a source of great hardship to him; and, on the other hand, if, he who has a thousand head should not give more than one, it would be very little, indeed. In order that this may be more just, they stated he who has two hundred head of any kind whatever, should give the increase of one as a first-fruit to God; and this should not be the worst or the best, but an average; and he who does not have as many as this, should give in proportion to what he has. There are other masters who do not agree upon this point, namely, that one out of every two hundred head should be given as first-fruits, but they say that it would be more reasonable to give one out of every hundred head. All the masters who succeeded these agree that it would be better if the first-fruits were contributed according to the custom in every country. And where there is no custom of giving them in a certain neighborhood, they should be given according to the practice which prevails in the district nearest to that neighborhood; and if in that district from which they adopted the custom, they should be given in many ways, that one should be adopted which is considered to be most reasonable. Men are required to give these first-fruits as well as tithes, for so Our Lord God commanded.

LAW V.**To Whom First-Fruits Should Be Given; Who Has Power to Apportion Them; and to What Penalty Those Are Liable Who Do Not Give Them.**

Those who give first-fruits should give them to the priests of the parish churches where they receive the Sacraments of the Holy Church: and it is in the power of the bishops to order how they should be apportioned. And if anyone should not be willing to give them, he can be excommunicated, just as in the case of tithes.

LAW VI.**Which Treats of How Many Ways Offerings Are Made to God.**

Christians make offerings to God in three ways. The first is, when any one gives something to God, or to the Church, in his lifetime, whether it be movable or immovable property. The second is, when he makes a donation to it at his death, for the sake of an annual mass, or for masses in general. The third is one which is made every day to the altar, or to the priest by kissing his hand: and these offerings men are required to give to the priests of the parish churches where they live, and receive the Sacraments; they have, however, the right to offer them in other churches if they so desire. And although priests are required to pray to God for men in order that He may pardon their sins, they should be under still greater obligations to do so on account of the offerings which they receive from them.

LAW VII.**How Offerings Which Are Promised Should Be Given.**

When men offer or promise to give something to God, or to the Church, as stated in the first or second way mentioned in the preceding law; they, or those who inherit their property, or in whose hands they leave their wills, are bound to fulfill the same. If any of those whose duty it is to do so should interpose obstacles, or refuse to act the Holy Church declares that they are guilty of the sin of sacrilege, and are to be classed with those who commit homicide; and that, for this reason, they should be excommunicated and expelled from the Church, as persons who are not loyal to those who trusted in them, leaving in their hands the accomplishment of a deed which concerns their souls: and moreover that they do not perform their duty to the Holy Church, which they are bound to do. It would seem, besides, that persons of this kind do not believe that they will rise again on the Day of Judgment, since they do not hesitate to commit such a great fault; but where they set up a lawful defence why they should not carry it out, they should be heard.

LAW VIII.**Offerings Should Be Made Voluntarily, and Not Through Compulsion.**

Oblations mean the same as offerings which men make at the altar of a church, or to the priest by kissing his hand or his foot when he says mass, through reverence for God whose body he consecrates and makes manifest in his hands; and this is the third kind of offering. Men, however, are not bound to do this if they are not willing, nor can they be compelled to do so. Every good Christian, of his own free will, should make an offering at least on the three great festivals, Christmas, Easter, and Pentecost; and wealthy persons, who can do so, on Sundays and holy days that should be observed: and this should be done because Our Lord God ordered it in the old law: "Do not thou appear before me empty, so that thou dost not offer me anything:" and it should be understood of this offering, as of the others which Christians are required to make to God, that it should be done with good will, either by praising His name, or by performing other good works.

LAW IX.**For What Reasons Priests May Compel Men to Make Offerings.**

Where a priest qualified to say mass is poor, so that he has nothing to live upon, although it is stated in the preceding law that he has no authority to

compel men to give him offerings, he can, nevertheless, compel them in the following way, that is, by not saying the service to them. For as the Apostle St. Paul said, no one is required to exert himself in the discharge of his duty by using his own property for the benefit of men, if he does not receive from them some reward for his pains. This, however, should be understood in the following manner, namely, where the cleric has nothing for shelter, or does not know how to perform any of those necessary duties which it is proper for him to do and are mentioned in the Title of Ecclesiastics; or, if he does know them, he is so old, or so infirm that he cannot perform them. But where in any country, or in any place, a custom exists of making a certain offering on the three great festivals, or on other great holy days, and the custom should be abandoned through persons not desiring to practice it; the priest should not consider himself injured on this account, and desist from conducting the service, but he should request the bishop or the prelate of the diocese to compel persons, by the authority of his office, to observe the good custom aforesaid.

LAW X.

From What Men the Holy Church Does Not Receive Offerings, and for What Reasons.

The Holy Church experiences very great sorrow on account of Christians who live evil lives, and because of the sins which they commit, she abhors their acts and disdains their gifts. For this reason she decreed that priests should despise and reject the offerings of such as these, for the reason that they carried with them shame and affliction, and shared those sins. These persons resemble such as cherish enmity and grudges against their neighbors, and seek to do them injury in public, and do injure them. Speaking against this, St. Cyprian said, that any man who did not live in peace with his neighbor, where he had the power to do so, could not have peace with God. Those who oppress the poor, by doing them wrong, belong to this class. In opposition to this, Our Lord Jesus Christ said in the Gospel, that whoever treated the poor badly, hated Him, and whoever despised or injured them, did the same thing to Him; and this applies to those who steal the property of others, or rob them. With reference to this, St. Augustine said no one could be saved if he did not return what he had taken. Those, also, who give money at usury for the sake of gain act contrary to the law and prohibition of the old religion, as well as of the new. The same rule applies to bad women who commit wickedness with their bodies. In opposition to this Isaiah the prophet says: "Thou shalt not accept a contribution from women of evil life." The same rule also applies to persons who deface churches, and remove property from them by force, and also to such as keep concubines secretly; and to persons who commit simony; and to priests who receive a church from the hands of laymen, if they do not do so for some of the reasons mentioned in the Title treating of the right of patronage which men possess in churches. This applies also to those who knowingly associate with persons excommunicated with the greater excommunication. From none such persons as these should priests receive offerings, if they have openly committed sins of this kind, or from others who have committed great and outrageous faults secretly; and this rule should be understood to be in force as long as they remain in such sins, and do not desire to perform Penance on account of them.

TITLE XX.

Concerning the Tithes Which Christians Should Pay to God.

Abraham was the first of the patriarchs and a very noble man, and such a friend of God that He said in his behalf that all people should be blessed in his descendants; and he, knowing that those who had lived before him had given very little to God in proportion to the benefits which they had received from him, began to give the tenth part, in addition to the first-fruits and offerings which those who preceded him had given: and he gave this, in the first place, to Melchisedek, the high priest, and out of the spoil which he obtained from the kings whom he conquered, when he rescued from them his nephew, Lot, whom they had taken captive. For which reason these two kinds of service, namely, first-fruits and offerings, which are mentioned in the preceding Title, and in this Title which treats of tithes, men employed for the service of God, until he gave the written law to Moses, who was a very holy man and such a friend of God that it was said that he talked with Him, as one friend talks with another; and He commanded that all these things which he desired to retain for himself, as a sign of the acknowledgment of sovereignty and of benefits conferred, should be written in the law in order that the people might give them to the priests, who offered sacrifice to God according to the old religion, and to the Levites who served them: and this was always observed.

Afterwards, when Our Lord Jesus Christ came, he confirmed this by stating to the Jews that, although they paid their tithes with articles of little worth, they should not fail to do so with those which were valuable; and he gave them this saying, for the reason that he held that they should pay tithes of everything, and therefore Christians always observed this. The saints, who spoke of this matter, explained for what reasons men should give the tenth part as a tithe, rather than any other amount; for they stated that Our Lord God established ten ranks of angels, and because one of them fell through pride, he desired that its place should be supplied by the race of man. Moreover, they declared that this was on account of the ten commandments which Our Lord God gave in writing to Moses and ordered to be kept, so that men might live properly, and know how to avoid committing sins by which God would be grieved, and that they might not experience evil on that account.

In addition to this, there is another reason why men should give tithes; and this is on account of the ten senses which God gave them, by means of which they perform all acts, and that He may preserve and direct them, so that they will use those senses properly, and keep well and perfectly the ten commandments of His law, in such a way that, imitating the humility of Our Lord Jesus Christ, they may deserve to inherit that place which the tenth order of angels lost through its pride.

Since in the preceding Title we treated of first-fruits and offerings, which are things of great assistance to the priests; it is proper to speak here of tithes, which is a different matter, and by means of which the whole clergy—including prelates of high rank as well as ordinary priests—are greatly assisted; and we shall show, in the first place, what a tithe is; how many kinds there are; to whom, and in what way, it should be given; how tithes should be apportioned; what benefits men enjoy because they pay their tithes properly, and what injury results to them if they pay them improperly; as well as all other matters which relate to tithes.

LAW I.**What a Tithe Is, and How Many Kinds There Are.**

A tithe is the tenth part of all property which men gain lawfully; and the Holy Church ordered this to be given to God, for the reason that He gives us all the property upon which we live in this world. Tithes are of two kinds. One is that called, in Latin, predial, which consists of the fruits of the earth and of trees. The other is called personal, and is that which men give by reason of their persons, each one according to what he earns by his service, or by his business.

LAW II.**Who Should Pay Tithes, and Out of What Property.**

All men in the world are bound to give tithes to God, and especially Christians, for the reason that they have the true religion, and are more closely united to God than any other people. For this reason neither emperors, kings, nor any other powerful men, of any description whatsoever, can avoid paying tithes: for the more powerful, and the higher in rank they are, the more they are obliged to pay them, knowing that the honor and power which they possess are all derived from God. This also applies to priests, for they, like laymen, should pay tithes of all they have, except where this is derived from the landed property which they hold of the churches which they serve, and they cannot excuse themselves from paying by reason of their belonging to the clergy. Moreover, those who belong to religious orders, where they are not exempt through some special privilege granted them by the Pope, as well as Moors and Jews who are slaves to Christians, or who live with them in their service, must pay tithes; and this is on account of the lands which they cultivate; for the Holy Church commanded that all the persons aforesaid should give the tenth, not only of the produce of their lands, but also that of their trees. This is understood to refer to immovables of all kinds, vineyards, gardens, meadows—both those from which hay is cut, and pastures—mountains from which timber is taken for all kinds of work and wood for fuel, fisheries, mills, ovens, baths, the rent of houses, and all other kinds of produce and revenues which men obtain from the above-mentioned sources and out of which they should pay tithes; and moreover of the increase of mares, cows, sheep, and all other kinds of cattle of every description, they must give the tenth. They must not only give the tithe of the increase of all such cattle, but of all the produce which they receive from them, as, for instance, that of cheese, and wool. They must also give the tithe of bee-hives, and this is understood to refer as well to the swarms, as to the products which they obtain from them, as honey and wax.

LAW III.**Of What Property Men Should Pay Tithes, on Account of Their Persons.**

Men should, on account of their persons, pay tithes of other things besides those mentioned in the preceding law. And, for the reason that they are of many kinds, the Holy Church mentions everyone of the things of which tithes should be paid: and she ordained that kings should give the tenth of what they gained in war, which they made justly, as, for instance, against the enemies of the Faith; and this also knights, noblemen, and all other Christians should do. The Church also deemed it proper that noblemen should pay the tenth part of the income from the lands which they hold of the king; and that knights should contribute the tenth part of the pay which their lords give them. She

commanded, moreover, that merchants should pay the tenth part of the profits they obtain from their merchandise, and craftsmen the tenth part of the earnings of their trades, and hunters of every kind—both those who hunt on land, and those who fish in the waters—should pay the tithe of what they obtain, and that masters of every science, who teach either ecclesiastics or laymen in schools, should also give the tenth part of their compensation, for the Church desired that these should pay the tithe of what they received by way of salary, as well as what scholars give them in consideration of their instruction. Moreover, she commanded that judges should give the tenth of what they receive by way of emolument, and this includes both those who preside in the court of the king, and those who render decisions in towns; and also that the royal magistrates, and all others who have the actual power of dispensing justice should give the tenth of their salaries. Advocates should give the tenth of what they obtain through lawsuits, and notaries the tenth of what they earn by writing books, and all other persons of every description should pay the tithe of the remuneration which the lords give them for the services which they render. Not only did the Holy Church deem it proper that Christians should give the tithes of all these above named things, but also the tithes of the days in which they live, and for this reason they fast during Lent, which is the tenth part of the year.

LAW IV.

Concerning the Exemption from Paying Tithes Which Religious Orders Enjoy, When It Is Valid, and When It Is Not.

Pope Adrian granted an exemption to the Templars, the Hospitallers, and the members of the Order of Cistercians, from paying tithes on real estate which they cultivated with their own hands, or at their own expense. This exemption was observed until the General Council which Pope Innocent III called, in the year twelve hundred and fifty-five. It was decreed by this Council that the exemption granted the aforesaid orders, by Pope Adrian, should be valid, as far as it applied to lands which they had obtained up to the time of the meeting of that Council, where they cultivated them as above stated; but with regard to those obtained subsequently, no matter how they were acquired, it was ordered that a tenth of their produce should be given, just as other orders give it, whether they cultivate them with their own hands, or otherwise.

In addition to this, it was decreed that no lands which were accustomed to pay tithes to secular churches should be purchased, except for the purpose of building new monasteries, and that, whether they were purchased or donated, or whether those who cultivated them did so with their own hands, or gave them to others to be tilled, they should pay the tenth of what they yielded. All other orders, of every description, must pay tithes from all the landed property which they possess; except from such as they begin to cultivate, in the first place, either by levelling mountains, or by digging up trees, and thereby placing said lands under cultivation; but if any great calamity should befall their parish church, they must pay a tithe on that account. Moreover, they are not obliged to give a tenth of the produce of the gardens which they possess, or of the beasts which they rear.

LAW V.

For What Reasons Religious Orders Cannot Avoid Paying Tithes, Although They May Have an Exemption from Doing So.

Templars, Hospitallers, and Cistercian monks, are the orders which enjoy an exemption from paying tithes of the produce of their lands, as stated in the

preceding law. But where the churches to which those lands were liable for tithes before these orders came into possession of them suffer great loss, they cannot be excused from giving the tenth of their yield, by reason of this exemption. Moreover, when a monastery of any order makes an agreement or contract with a church, relating to the tithes it is required to pay from certain lands, and, after this, the monastery obtains an exemption from paying tithes, the agreement or contract made before this is not affected thereby, because no mention was made of it. And if, after such an exemption was granted, the tithes from any lands should be paid, the monastery cannot claim exemption afterwards from paying them, and this is the case for the reason that they themselves acted contrary to their exemption. The same rule will apply where they cultivated the lands of others with their own hands, or at their own expense; for, in this instance they cannot avoid paying tithes from them, and the case would be the same where they transfer these lands to other persons, under the condition that if they cultivated them they should not be obliged to pay tithes from them.

LAW VI.

Out of What Property Lepers, Jews, and Moors, Should Pay Tithes.

Lepers belonging to the Church of Rome are exempt from paying tithes from their gardens and the increase of their beasts, but they must pay them from all other landed property which they own. Moreover, Jews and Moors, who live in Christian countries, must pay tithes from all immovables, just as Christians do from that which belongs to them. They must also give the tenth of the increase of their beasts and bee-hives, for these are counted the same as landed property, and therefore they should give the tenth of them, just as Christians do who have no privileges which exempt them from giving it. They should also pay the tithe of the rent of houses which they hold among Christians, and in the jurisdiction of the churches where those to whom they formerly belonged were accustomed to pay tithes, for it is not just that the church should lose its right to property, or that that right should be impaired, even though its ownership passes to Jews or Moors. The Holy Church also ordains that every man who holds land subject to tithes, whether he is a Christian, a Jew, or a Moor, even if he has pledged, rented, loaned, or disposed of it in any other way whatever, and whether it is held in his name, or in that of another, is bound to pay the tithes to which it is subject, and he cannot avoid paying them on account of any lawsuit which he may have with the owner of the said property.

LAW VII.

To Whom Tithes Should Be Paid.

It is stated in the first law of this Title, that there are two kinds of tithes, predial and personal. And since, in the preceding laws, we described what both of these tithes are, it is proper to state here to whom they should be paid, wherefore, according to the ordinance of the Holy Fathers, they should be paid to parish churches and to the priests who serve them: for Our Lord God who desired to retain them for Himself, as a sign of His sovereignty, deemed it proper that they should be given to priests whom he selected in his stead to conduct the service in the Holy Church, in order that they might have something to live upon, and be enabled to serve Him more thoroughly. And, although there are some priests who do not live as good lives as they should, or do not spend the tithes as they ought, men should not, for this reason, despise

them, or avoid paying them tithes; for they do not give them on their account, but on that of God from whom they expect a good reward in this world, and in the next.

LAW VIII.

Churches Should Be Marked Out By Districts, and Be Divided By Boundaries, in Order that It May Be Known What Lands Are Subject to Tithes.

Churches should be marked out by metes and bounds, and separated so that men may know which lands belonging to each one of them are subject to tithes, and although men may have real estate in many places, every individual is required to pay tithes to the church within whose boundaries his property is situated; and this is understood to mean all lands mentioned in previous laws. Where, however, churches in certain localities are accustomed to divide the tithes with others, and this custom has prevailed for a long time, and was granted by bishops; in order to remove any contention which might arise among men by reason of this, the Holy Church ordained that where churches that were situated in one bishopric had a custom of this kind, it should be observed; but where the churches were situated in two bishoprics, this could not be done, and the Holy Church rather forbids it, in order that the limits of the bishoprics which are defined should not be encroached upon, nor that they should be involved with one another for a reason of this kind.

LAW IX.

How the Tithes of Beasts Should Be Apportioned Among Churches.

Beasts are pastured at times on the lands or estates of those who own them, and sometimes they are compelled to send them elsewhere to districts where they know they will live better, and by this means they may gain more profit from them; and we desire to state here how men may know to what churches they should pay their tithes. We therefore decree that of beasts fed for the whole year in the district where their owners dwell, they should pay all the tithes to those churches where they are parishioners; and where they send their beasts to another bishopric, and they remain there for the space of an entire year, they should pay their tithes there; where they feed for half the year in the bishopric where their owners dwell, they should divide the tithes between both bishoprics; but where the said beasts wander through many bishoprics, so that it cannot be ascertained with certainty in which of them they remained the longest time, in order to remove any cause of dispute between men, we decree that half of the tithes should be paid in that bishopric where the animals were pastured, and the other half to those churches where the owners of the beasts are parishioners. Where beasts, while passing through any place, stop, we decree that tithes shall not be collected for that reason, unless they should remain there at least one month. Where, however, it happens that the beasts were pastured for half a year in the bishopric where the owner dwells, as above stated, and the other half wandered about in two bishoprics, so that they feed by day in one bishopric, and pass the night in another; in this case the tithes should be equally divided between the two bishoprics; in one, on account of the pasturage, and in the other, on account of the shelter. It is understood that all above stated should be done in such a way that the shepherds may not act with evil intentions, or for the purpose of defrauding the bishops by changing their beasts from one bishopric to another, so as to make them lose their dues.

LAW X.**What Men Bishops Should Appoint to Collect the Tithes from Beasts, in What Way They Should Collect Them, and to What Penalty They Are Liable Who Do This Improperly.**

There are shepherds who conduct their beasts, for the purpose of pasturage, through different bishoprics, as stated in the preceding law; and, for the reason that it sometimes happens that those men whom the bishops appoint to collect the tithes, oppress the shepherds by taking more than they ought, and, although they may have already paid their tithes in one bishopric, compel them to do so in another; now, in order to protect the owners of the beasts from being wronged in this way, and besides, that the tithes may be paid in those places where they are due, as above stated; we deem it proper that the bishops appoint good and loyal men who will collect the tithes justly, and at the proper time, and from things from which they ought to collect them, and not from others; as, for instance, from the increase of the beasts not taking one thing instead of another, contrary to law, through a desire to obtain some profit from it, as certain persons are accustomed to do; for they take cows, instead of calves, and sheep, instead of lambs, and hogs, instead of shotes, and do the same with animals of greater value: and in order to cause them to observe this law, and act in a faithful manner, the bishops should take an oath from them before they send them, and give them their open letters, sealed with their seals, stating that they authorize them to collect their tithes: and persons of this kind when they receive the tithes from the shepherds, should draw up two schedules, properly divided, in their presence, showing the amount of tithes which they receive from each flock, and in what locality, and for what reason; and they should seal both of these papers with the seal of the collector, and with the seal of the head shepherd besides, if he has one, and, if not, he must sign it along with men of lawful age as witnesses who are there with the flocks; and the shepherd who pays the tithes should keep one of these two papers, and leave the other with the collector, in order that both may render a true account to their master, and neither of them be able to commit wrong, or fraud.

If any one should violate this law, and collect tithes a second time after they had been once given, if he produces a schedule, as above stated, showing how the tithes were paid, and in what place, he who received them must pay double the amount to him from whom he collected them, and in addition, all damages which he suffered on this account: and where he who received the tithes refuses to give the schedule, as has been stated, and he should afterwards collect the tithes from the party elsewhere, we direct that he shall pay double the amount, as well as all damages and losses which resulted from his act.

LAW XI.**Where Personal Tithes Should Be Paid.**

Personal tithes are such as men are required to give on account of their persons, and tithes of this kind should be paid to the priests of the church where the person owing them hears the service and receives the Sacraments. And, for the reason that some persons are in doubt to whom kings should pay the tithes of these things, because they cannot dwell continuously in one place, the Holy Church ordains that each one shall pay them in that parish church in whose district he remains the longest time, and where he hears the service, or receives the Sacraments. However, the kings of Spain are accustomed, for

a long time past, to pay their tithes to their chaplains, for the reason that they hear the service and receive the Sacraments from them more often than from other priests.

LAW XII.

Out of What Profits Men Are Required to Pay Tithes, Although They Obtain Them in An Evil Way.

Where men gain property justly, they should pay tithes out of it, as has been already stated. However, for the reason that they obtain much property wrongfully as, for instance, from unjust war; or from hunting which is forbidden; or from robbery, theft, simony, and waste; or where judges receive rewards for rendering wicked decisions, and advocates and attorneys obtain fees for knowingly conducting unjust lawsuits, or witnesses profit by giving false testimony; or where officers of the king's household, or of those of other lords, acquire or receive property from men contrary to the orders of their masters; or where money is obtained by the devices of gamblers, counterfeiters, players of dice, or of draughts, diviners and fortune tellers, whether men or women; or where women of evil life gain by their sin; or where powerful men take from those over whom they have authority, by threatening them so that they have to give them something through the fear which they have of them, or in any other way whatever similar to these, by means of which men acquire property through sin; for the reason that some are in doubt whether they should pay tithes out of such gains or not, the Holy Church deemed it proper to settle the matter. Therefore, she ordered that if one of the above named persons, whether he be Christian, Jew, Moor, or heretic, obtains any land such as is mentioned in the third law of this Title, he must pay the tithes from it; although he may not acquire it justly in any of the ways above mentioned. For the Church does not receive from persons of this kind on account of their persons, but on account of the right which passes to them with the rest of the land, but where they obtain other property, not immovable, a distinction arises with regard to which of them should pay tithes from what they gain by reason of their persons, and which of them should not pay them. For if what they obtain is something whose ownership passes to him who acquires it, so that he who formerly owned it has no claim or right against the other by means of which he can recover it, the holder is required to pay tithes from it. This applies also to that which gamblers and swindlers obtain through their gambling and swindling; and likewise to what bad women gain by their bodies, for although women of this kind obtain money in a evil way, it may be accepted. The Church, however, deemed it proper not to receive tithes from them, nor from the others above mentioned in this law, in order that it may not appear that she consents to their wickedness. This is understood to be the case during the time they live in this sin, for after they abandon it tithes can be received from them without reproach.

Where the profit is derived from something, the ownership of which does not pass to him who gains it, as, for instance, a theft or a robbery, the tithe of it should not be paid, as neither tithe nor alms can be given of the property of someone else, and those who do this resemble persons who sacrifice another's child to God; for whatever grief a parent would experience by seeing his son killed for the purpose of sacrifice, so Our Lord God suffers equal affliction where tithes and alms are given out of the property of others. This also applies to the property which men gain through waste or simony, or by playing draughts or dice, or to what powerful men obtain through threats, and to what others give them through fear, and to what officials acquire in any way whatsoever where they have no right to do so. In whichever of these ways they

obtain it, those to whom it belonged have the right to demand it of them, although the ownership may appear to have passed to the latter. For these reasons tithes should not be paid out of such profits.¹

LAW XIII.

In What Way Tithes Should Be Paid.

Men incur expense in cultivating land and gathering its products. And for the reason that some persons might think that this should be deducted before the tithes are paid, the Holy Church deemed it proper to correct this mistake, and to show in what manner the tithes should be paid. She decreed that all produce which men collect from land and trees, whatever was sown as well as planted, and likewise the increase of beasts, and the income from all real property mentioned in the third law of this Title, should all be subject to tithes, not reserving the expenses, the taxes, or the dues of the owners, or anything else whatever. Where the property out of which tithes should be paid belongs to several persons, and they wish to divide it before they pay the tithes, they should pay them just as soon as it is divided, every one giving his share before anything whatever is taken from it.

LAW XIV.

For What Reason Men Should Not Take Out the Seed Before They Pay Tithes.

Some men haggle very foolishly, thinking that they should take out the seed before they pay tithes, and they say they have a right to do this because tithes have already been taken from that seed. The law of the Holy Church shows those who are influenced by covetousness to say this, that they do not pay proper attention to what is just. For Our Lord God who gave the first seed, gave it willingly, and without any conditions, not desiring it to be returned to him. And for this same reason those who now sow it, should not employ force in any way with regard to it, nor should they reserve the same. And there is another reason why they should not do this, as after seed is sown it dies, and therefore it is no longer under the control of him who sows it, but under the control of God who caused it to germinate, and to grow, and bear fruit. There is still another reason why it should not be reserved, for Our Lord God should not be in a worse condition than men are with respect to their lands. For if one man transfers his land to another in consideration of certain property, or for a certain sum of money which he gives for it, he who cultivates it has no right to reserve the expenses, or the seed, or anything else, before the owner takes what he has a right to receive. Since men can do this with respect to their own property, much more should they do so where God, who is lord of the earth, and of all things that are in it, is interested.

¹ In the matter of tithes, as in all others affecting the revenues of the Church, nothing escaped the vigilance of priestly collectors. The Canon Law is somewhat less indulgent in the way of exemptions than the Code of Alfonso X. By the provisions of the former a layman who withholds his tithes is not entitled to Christian burial. On the other hand, in early times, the Church did not examine, with any great degree of discrimination, the source from which the money was derived which found its way into the ecclesiastical treasury.

By a decree of Pope Boniface VIII, issued in the latter part of the thirteenth century, in time of war and under the pressure of necessity, a clerk or layman, whose annual income did not exceed seven gold florins—about two hundred dollars of our money—was exempted from the payment of tithes. No similar exemption appears in the *Partidas*, even under conditions of peace. "*Saeculares quoque clerici, quorum Ecclesiastici redditus & proventus annui summam septem florenorum auri non excedunt, eandem decimam non praestabunt.*" (Corp. Jur. Can. II Extrav. Com. III, 7.)—Ed.

LAW XV.**Capital May Be Deducted Before Tithes Are Paid Out of the Profits Which Are Made by Means of It.**

Merchants and tradesman have capital, with which they purchase property in order to obtain profit by it. And although it is stated in the third law preceding this, that neither expenses, nor anything else, should be reserved before the tithes are paid, there are instances in which this may be done. This is the case where property is purchased to sell, whether it consists of real estate or chattels; and if that with which it was purchased has been already subject to tithes, the capital which was paid for said property, in the first place, can be deducted, and the tithes paid afterwards out of the profits; but if it had not been previously subject to tithes, the capital should not be deducted before the tithe of the whole has been paid. For this reason a difference exists between the tithes which men pay out of their real estate, and that which they themselves obtain in any other manner, because the power of God operates with greater effect on the profits derived from real estate, than on those which men acquire otherwise; and although the power of God constantly extends over the latter, the hands of men, laboring in many ways, produce much effect upon them.

LAW XVI.**For What Reasons Men Should Deduct the Expenses Which They Incur in Their Houses, Before They Pay Their Tithes.**

Where men have mills, fisheries, or other landed property, such as is mentioned in the third law of this Title, and desire to repair them, for fear they may decrease in value, or in order to improve them that they may yield them more profits, they should not deduct the expenses which they incur, before they pay their tithes; even if the property on which they make said repairs or improvements has already been subject to tithes. This is the case because all that is spent in improvements and repairs is for their benefit. But he who has purchased some of the lands above mentioned with the intention of selling them, and, before he sells them, spends something in repairing them to avoid their being destroyed; in this case he can deduct the expenses which he incurred in this way, in addition to the capital, before he pays the tithes. This, however, is understood to be the case where the property with which he purchased said real estate, or by means of which he repaired it, has been already subject to tithes, as, for no other reason, is he entitled to deduct it.

LAW XVII.**Tithes Should Be Paid Out of All Produce and Incomes, as Soon as They Are Collected.**

Tithes which are called predial should be fully paid out of all products and incomes of lands, as soon as they are collected, nothing being reserved before they are paid, as is above stated: and where anyone, through negligence or obstinancy, does not pay the tithes at once, and they are lost, or diminished in value, he must give an equal amount in value, and of as good quality as that which he should have given as the tithes. This is the case because it was his fault, for the reason that he did not pay when he should have done so. However, men cannot pay the tithes which they are obliged to pay on account of their persons so promptly, for the reason that the profits which they make, out of which the tithes are to be taken, are of many kinds; and therefore the Holy Church ordained that every one should pay according to the custom of his country, and that some specified property might be given instead of tithes,

as for instance, where merchants or traders give every year certain sums of maravedis, more or less, instead of the tithes of their profits; this also all Christians should do out of the property which they justly gain. No one has a right to excuse himself from giving something out of his profits as tithes by alleging that it is not the custom to do so, for this would be contrary to what the Holy Fathers declared, namely; that all Christians should give the tenth of all property which they justly gained. Where there is no custom regulating how much they should give, the Holy Church deemed it proper that this should depend upon the will of him who had to give it, and should be what he thought was right, and that the priests should be content with what was given them in this way.

LAW XVIII.

Tithes Should Not Be Given to God Out of What Is of the Worst Quality, But of What Is of Average Value.

Covetousness, at times, overcomes men, so that they do not pay tithes properly, as they should do, and although they may give as much as they ought, they knowingly err, and give of that of inferior quality. To withdraw them from this error, the Holy Church deemed it proper to show in what way tithes should be given, and this is as follows, viz: where the tithe consists of the produce of the earth, or of the fruits of trees, they should not give of that which is of inferior quality, nor of that which is superior, but of that which is of average value, for it is not just that what man has to give to God should be given out of what is inferior, or out of what he himself rejects. Moreover, if he gives it out of what is the best, men might become displeased, and would not have so great a desire to cultivate the soil, or to breed cattle. This rule also applies to beasts, and all other property out of which tithes should be paid. This can also be done in another way, namely; by causing all the beasts out of which tithes are to be taken to pass by a certain place, so that they can be counted one by one, and that in which the number ten is made up should be given by way of tithes.

LAW XIX.

In What Way Tithes Should Be Divided According to the Custom of Each Locality.

It is customary to divide tithes in many ways, such as have been practised, for a long time, in different districts and bishoprics. There are certain churches which divide tithes into four parts; the first for the bishops; the second for the priests; the third for the work of the church; and the fourth for the poor. There are other churches which divide them into three parts; one for the bishop, one for the priests, and one for the work of the church. There are others in which they make only two parts of them, of which the bishop takes one, and the priests the other. For this reason, in every bishopric, the custom which has been practised in the division of the tithes should be observed. However, where churches have to be built, the Holy Church consented that the bishop, within whose bishopric the church was to be constructed, should have the power to select from any of the ordinances aforesaid that which he thought to be most reasonable, and it also decreed that the bishop had the power to order in what way the portion set apart for the work of the church should be expended: and this is the case because he is required to give an account to God for it.

LAW XX.**In How Many Ways God Rewards Christians Who Faithfully Pay Their Tithes.**

Where men pay their tithes faithfully, God rewards them well for it in four ways. First, He gives them more plentiful harvests; second, He bestows upon them bodily health, and St. Augustine said, that those who pay their tithes fully will not only have abundance of crops, but God will give them health for that reason. The third is, that God pardons their sins. The fourth, that He gives them Paradise. St. Augustine said that Our Lord God would bestow these rewards upon those who paid their tithes justly. And, in addition to this, he said that out of the nine parts which men retain they should give alms to the poor. We have an example of this in the Holy Fathers, for Our Lord God gave them abundance of riches, for two reasons, first, because they paid their tithes faithfully, second, because they paid their taxes to the lords of the land, which every man is bound to do. Wherefore Our Lord Jesus Christ said in the Gospel: "Render unto Caesar the things which are Caesar's, and unto God the things which are God's."

LAW XXI.**In What Ways God Inflicts Chastisement Upon Men Because They Do Not Pay Their Tithes as They Ought.**

Our Lord Jesus Christ inflicts chastisement, in four ways, upon those who do not pay their tithes as they ought. First, He brings hunger and poverty upon them. And concerning this Malachi, the prophet, spoke in the person of Our Lord God, as follows; "For the reason that you did not pay me your tithes, be accursed in hunger and in poverty." The second is, that He takes the tenth part of what they have from those who do not pay tithes as they should do. With regard to this, St. Augustine said: "That the justice of God demands that the tenth part of the property of those who do not pay their tithes faithfully, and which is what they should give to God, should be taken from them by robbers; for although God is always ready to do good, men sometimes hinder Him from doing so by their wickedness." The third is, that God permits plagues to come upon the earth, as, for instance, locusts and insects, and storms of many kinds which destroy the harvests. Concerning this St. Augustine said, that when the world was oppressed by such afflictions they came through the wrath of God because He was deprived of His rights. The fourth is, that God consents that the land be overwhelmed with the taxes imposed by those who are its masters. With regard to this St. Augustine said, that the earthly lords would deprive those of their property who are not willing to give God his dues, for the reason that they occupy his place on earth for the purpose of giving to everyone that to which he is entitled.

LAW XXII.**Ecclesiastics, and Not Laymen, Should Receive Tithes, Except in Certain Cases.**

Ecclesiastics serve the churches, and administer the Sacraments to Christians, for which reasons they should have the tithes that they may live upon them, for so Our Lord God commanded. Laymen should not receive them, for, if they do so, they will be guilty of great sin, which will cause very serious injury to their souls. There are, however, laymen who are entitled to receive

them in the following manner: as where prelates give them in the way of a concession for a stated time, or for life, said laymen being such as are a benefit to the church; or where they are poor, for the reason that they have need of them; or they may give them to them as compensation for services which they have rendered to the church or the prelates; and persons of this kind should not receive them as those who have a right to them, but merely in the name of the church, and she must always have the ownership and the possession of them.

LAW XXIII.

The Pope Can Grant Exemptions from Paying Tithes to Laymen, or Permit Them to Receive Them for a Stated Period.

The Pope has authority, by granting exemptions to laymen, to release them from paying the tithes on their lands, if he should desire to do them this favor. He can, in addition to this, give them permission to receive tithes from certain churches for a stated period, or perpetually, according as he deems proper. This, however, should be understood in the following way, for such a privilege is valid only with regard to such lands as were already under cultivation when it was granted; but it will not be available with regard to others which are subsequently, and, for the first time, placed under cultivation; as, for instance, where mountains are prepared by breaking them up, or where trees are removed from them, for the purpose of tillage.

Moreover, when laymen appropriate the tithes of churches, and priests cannot take them from them for the reason that the said laymen are powerful in that country, they can then redeem them, by giving them something for the sake of recovering them. Priests, however, should do this with the consent of their bishop, and if they should do so in any other way, they will, for that reason, be guilty of the sin of simony.¹

LAW XXIV.

In What Way Priests Can Recover the Tithes of Their Churches When They Are Held by Laymen.

Priests can recover the tithes of their churches, not only by redeeming them, as stated in the preceding law, but also by taking them in pledge from those who hold them; and from such as these they are not required to deduct the produce which they obtained from the tithes of the property which they gave in their stead, when they took them in pledge. But where the tithes be-

¹ This clause clearly indicates that the Church was, as yet, very far from acquiring, in the Spanish Peninsula at least, its later influence. For a prelate to be compelled to redeem property, indisputably belonging to his diocese, from the hands of a layman, by whom it had been illegally seized—in other words, to submit to blackmail explicitly sanctioned by law—would have seemed incredible to churchmen of the time of Pedro Arbues and Torquemada. The fact is, that affairs were still so unsettled in the Peninsula that ecclesiastical authority was undefined and precarious. The land had been but recently reconquered. Moorish institutions had not yet been abolished. The king, himself, did not conceal his partiality for his infidel enemies. The power of the Crown was daily defied by great vassals who brooked no restraint, and had long been accustomed to settle all disputes with the sword. Many of the most famous of the latter looked with indulgent eyes upon the creed and customs of their Moslem neighbors. Some regarded the cringing priest and friar, with whose fallings and vices all were familiar, with undisguised contempt. These nobles were highwaymen, in all but name, and the cloth of a bishop, if his purse was known to be well lined, rarely saved him from being despoiled, when he encountered a body of these aristocratic banditti. As the greater part of the wealth of the country was in the hands of the clergy, whose spiritual weapons were of little avail against a troop of men-at-arms sheathed in steel, utterly unscrupulous, and accustomed to unbridled license, they were justly considered better able to submit to extortion than others, and were treated accordingly. After being robbed, it was not unusual for the outraged minister of God to be demanded by his plunderers, which, suppressing his wrath, exercising his Christian forbearance, and probably with many mental reservations, he gave, perforce, with the best grace possible. Under such social conditions it is not strange that the most eminent dignitaries of the hierarchy were not infrequently compelled to redeem their benefices and their revenues, and even ransom their persons, from the hands of their turbulent and irresponsible neighbors.—Ed.

long to other churches which are not those of the priests to whom they were pledged, they cannot do this, nor can they deduct the produce, or even receive them in pledge. It is understood that the priests should do this when the church cannot recover its tithes in any other way.

LAW XXV.

Concerning Those Who Go for a Long Time Without Paying Tithes, or Give Them Less in Quantity and in Value Than They Should Do.

Avarice, which means the same as stinginess, is a very great sin, and influences some men so that they remain a long time without paying tithes; and there are others who although they pay them, do not pay them fully, as they ought. Where any person of this kind acknowledging his sin, repents, and desires to make reparation for it, the priest to whom he confesses should tell him that if he does not pay all which he should have paid or delivered as tithes, he cannot be saved; for St. Augustine said, that the sin is not pardoned, if a man does not return all the property of another which he took, where he is able to do so. But where he who desires to make such reparation is so poor that if he were ordered to return everything at once, he would not have enough to live upon; he should be directed to retain sufficient for that purpose, and be compelled to promise, that, if God favors him so that he may have sufficient to pay it all, he will do so as soon as he can.

LAW XXVI.

Concerning Those Who Sell or Purchase the Produce of Lands Before the Tithes Are Paid Out of Them, and From Which of the Parties the Tithes Should Be Demanded.

Men very often sell heaps of wheat on the threshing floor before they pay their tithes: and also the fruits of vineyards and trees, before they gather them, and without taking them to their houses. And for the reason that a doubt may arise from which of these parties tithes can be demanded, that is whether from the vendor or the purchaser; the Holy Church deemed it proper to explain this. She decreed that the tithes might be demanded of the purchaser, if it should be desired to do so; because what he bought passed to him with the claim for the tithes which the church had upon it. They can also be demanded of the vendor, because he committed fraud in selling the property before the tithes were paid out of it, and also because he received the price, which took the place of that to which the Holy Church had a right. If, however, she receives the tithes from either of these persons, she cannot afterwards demand them of the other; and if she should demand them of him he is not required to pay them. But where the demand was first made upon the purchaser, and the tithes could not be obtained from him for the reason that nothing of his could be found with which to pay them, they can then be demanded of him who sold the property: and the church should not empower a person of this kind to make a demand upon the purchaser, because he himself was to blame for selling the property before he paid the tithes. This regulation was adopted by the Holy Church because it was not willing to lose any of its property.

TITLE XXI.

On the Private Property of Priests.

The Holy Fathers established the rule in the Church that no priest should hold property, and that those who desired to hold it should not be received as priests, even though they all lived together in one place, so that whatever they possessed belonged to them in common. They did this to enable them to avoid the dangers into which they might fall by being covetous of riches, holding that men could, with great difficulty, retain them without committing sin. But for the reason that they saw that some were in danger of losing their souls, because they did not keep the promise which they had made not to hold property, as had been decreed, they changed the opinion which they held at first, and ordained that priests might hold property of their own, and that those who did not consider themselves sufficiently provided for by the tithes and other property which they received from the Holy Church, should dwell apart, each one in his own house; for they thought that there was less danger for them to have something openly, than to have it secretly, acting contrary to what they had promised. From that time forward there was a distinction made between the secular clergy and the regular clergy with regard to their earnings. For the secular clergy exerted themselves to acquire property openly, and whatever they justly obtained was called their private property.

Since in the preceding Titles we treated of first-fruits, offerings, and tithes, which are certain kinds of revenues that priests have a right to in order that they may live; so we desire here to treat of their private property, and, in the first place, to show what this is, and whence it derived its name; how many kinds there are; what priests are entitled to it; and what they have a right to do with this private property.

LAW I.

What the Private Property of Priests Is, and Whence It Derived Its Name.

The private property of priests is composed of all those things which they lawfully obtain and hold as their own, exempt from all claims, whether it be movable or immovable. And not only are those things which priests possess called private property, or *pegujar*, but also, especially, whatever fathers give to their children that they may hold it separately as their own, as long as they remain in their power; and also whatever masters give to their slaves, whether the former are laymen or ecclesiastics. But, under this Title, only the private property of ecclesiastics is referred to, for that of laymen is treated of in its proper place. It took the name of *peculium* which means the separate possessions which men have of every kind whatsoever, as, for instance, slaves, gold, silver, money, immovables, beasts, and every other kind of property which they own, and of which they are the masters. The word *peculium* derived this name from the Latin *pecudibus*, which means beasts, and this is the case because formerly the greatest wealth which men possessed consisted of beasts, of which they had many kinds.

LAW II.

How Many Different Kinds of Private Property There Are, and What Ecclesiastics Are Entitled to Hold It.

Where ecclesiastics have property of any kind whatsoever which they have obtained lawfully, it is called *pegujar*, as stated in the preceding law; and property like this the law of the Holy Church divides into two kinds. The

first of these is called, in Latin, *adventitia*, which means something derived from another source than that of patrimony; as, for instance, the profits which priests gain by reason of their persons, and what they inherit from their relatives as far as the fourth degree; or the donations which they obtain from kings and other lords, or from some of their friends; and what they earn by any occupation which it suits them to carry on, as stated in the Title concerning Ecclesiastics. The other kind is called, in Latin, *profectitia*, which means profit obtained from what is given by a father, or a mother; and, in like manner, what ecclesiastics obtain from the Church, which is their spiritual Mother, is called, in Latin, *profectitium*. Secular ecclesiastics can hold private property, but no others can; for none of those who receive a religious order, of any kind whatsoever, have the right to hold property, as set forth in the Title treating of them. This is the case because they renounced the world and promised not to have anything of their own when they entered the order.

LAW III.

What Priests Can Do With Their Private Property.

Adventitium, and *profectitium*, are two kinds of private property, as stated in the preceding law.¹ And, for the reason that some persons may doubt how ecclesiastics can make use of these two kinds of private property, the Holy Church established a distinction between them as follows namely; priests can give away the *adventitium*, in their lifetime, to whomever they please, not only while they are well, but also when they are sick, provided they are of sound mind. Moreover, she decreed that they can make a will disposing of such property, and bequeath it to whomsoever they wish; certain persons being excepted who are not entitled to receive donations or bequests, as, for instance, heretics, Moors, Jews, and others whom the law especially forbids to have property of this kind. Ecclesiastics can also make wills disposing of property which their parents gave them, or which they obtained in some other way, while still under their control.

LAW IV.

Concerning Priests Who Die Intestate, and Who Is Entitled to Their Property.

Ecclesiastics have the power to make wills disposing of their property, as stated in the preceding law. But for the reason that they sometimes happen to die intestate, the Holy Church made a distinction between persons entitled to the property of those who die in this way. She decreed that all the property which ecclesiastics became possessed of, by reason of their persons, as stated in the third law preceding this, should be inherited by their next of kin, as set forth in the Title concerning Inheritances, in the Sixth *Partida*², where it is explained in what way men can inherit from their relatives when the latter die

¹ These terms are derived from the Civil Law, the final and broadest distinction between them having been established by Justinian. The exemption from paternal control of property obtained from the mother, or her family, was originally granted by Constantine, and the significance and application of the *peculia adventitia* were greatly enlarged by a decree of Arcadius and Honorius. "*Quidquid avus, avia, proavus, proavia ex materna linea venientes nepoti, nepti, pronepoti, pronepti testamento, fideicommissio, legato, donatione, vel alio quolibet titulo largitionis, vel etiam intestati successione contulerint, pater filio filiaeve integra illibataque custodiat, ut vendere, donare, relinquere, alteri obligare, sicut nec materna bona, non possit, usufructu duntaxat ad eum pertinente, ita ut, quemadmodum ipse super his rebus licentiam totius potestatis amittit, defuncto eo, filio filiaeve praecipua computentur, nec ab illis, qui ex patre sunt coheredes, vindicentur.*" (Corp. Jur. Civ. Cod. II-LX-2.)

The rules of the Canon Law relating to the possession and disposal of private property by the clergy are far more strict, and limited in their scope than those of the Civil Law, or the *Partidas*. Despite the statement in the text, there is no mention of the *adventitium* and *profectitium* in the Title "*De Peculio Clericorum*." While a priest was entitled to hold property acquired before his ordination, under certain restrictions, all that obtained subsequently he was obliged to transfer to the Church. "*Unusquisque Presbyter res, quas post dies consecrationis adquisierit, propriae Ecclesiae relinquat.*" (Corp. Jur. Can. II-Dec. Greg. III-XXV-8.)—Ed.

² Post, 1271.

intestate. Where they do not happen to have any relatives nearer than the fourth degree, the church in which the deceased held his benefice should inherit his property. Where he held benefices in several churches, his property should be divided among them all, according to the proportion which he had received from each one. The prelate of the diocese to which the ecclesiastic who died in this way belonged, should faithfully claim his property, in order to give to each church its just share, and where he did not hold any benefice, she decreed that his property should belong to the church which he served; for it is right that that church should be his heir which united him to God, since he had no other relative.

LAW V.

For What Reasons the Property of Ecclesiastics, Who Die Intestate, Should Belong to the Church.

The property which an ecclesiastic, who dies intestate, obtained by reason of his person, being distinct from what he gained through the church, should be inherited by his relatives, as is stated in the preceding law. But where it was not known that a priest had any personal property of his own, all that is found should belong to the church, for a suspicion would arise that he obtained it from thence, since it is not shown that he acquired it from any other source. If, however, it was positively known that the priest had some private property when they gave him the church, or that he obtained his property afterwards, by reason of his person, but it is not known of what it consists, nor what value it has, then, if his relatives are in possession of the said priest's estate they cannot be deprived of it; but if the church desires to obtain it, and hold it, it must prove what part of his said estate the priest obtained from the church. Where it cannot be certainly ascertained that the priest owned any separate property, as above stated, although his relatives may be in possession of some of his effects, which he held in his lifetime, they must prove, in this instance, if they desire to retain these things, that they belonged to the priest, and if they cannot prove this, they must relinquish them to the church.

LAW VI.

On Ecclesiastics Who Purchase Lands, to Whom They Should Belong, and in Whose Name the Deed Should Be Made.

Judges should carefully examine, and be informed with respect to cases of this kind which they have to determine, as stated in the preceding law, that is, whether a priest, when they gave him his church, had any property of his own, or not. Where they find that he did not have anything of his own, and afterwards purchased immovables, all the latter must belong to the church; for it may reasonably be suspected that it was bought with funds obtained from the church. Wherefore, whenever a prelate buys any immovables with the revenues which he obtains from the church, the deed should be made in its name, and not in his own, and he should hold said real estate during his life, and after his death it should belong to the church; but where he obtains any land, or other property from any other source, the deed can then be made in his own name.

LAW VII.

In What Way Priests Defraud Their Churches in Purchases Which They Make With the Revenues Derived from Them.

Some priests defraud their churches in the purchases which they make with the revenues derived from them, and if they would consider this well,

they would see that they commit a greater fraud upon themselves. They commit this fraud also when they buy anything and make the purchase in the name of someone else, and not in their own ; and this should not be ; for, as they should not commit a fraud in their own name, so they should not do so in the name of another. Those who act in this manner are guilty of the sin of sacrilege, for the reason that they cheat the church out of its property, and they are like Judas, the traitor, who stole the money which he carried for the expenses of Our Lord Jesus Christ, which men gave him by way of alms.

LAW VIII.

On the Private Property Which Priests Call *Profectitium*, and What They Have the Right to Do With It.

Priests live by the produce of the lands which they hold of the churches, as well as upon other revenues. These things compose the other kind of private property, called *profectitium*, which priests possess, and the Church shows what disposition they can make of it. She decreed that neither a bishop, nor any other prelate, has power to make a donation of the lands of his church : for it is not just that priests should have the right to bestow elsewhere, for the service of other persons, the property which Christians give to the church in consideration of the pardon of their sins ; and for this reason she ordained that where it is given away the donations should not be valid. Moreover, ecclesiastics have no authority to make bequests or devises of lands or other property belonging to the Church. But where they have any personal effects acquired before they received their benefices, although they may not make wills, they have a right to give this property away ; divide it among the poor ; bestow it upon religious orders, or other establishments founded for purposes of mercy ; or give it to relatives and friends, or to those who serve them during their lives, whether they belong to their families or not ; and not as a bequest, but rather by way of alms, or because of the service which they rendered them ; and this they can do whether they are well or ill, or in the hour of death, provided they are in their right minds. And even where priests make any improvements on the lands of the church ; as, for instance, by building houses, or planting vineyards, or doing anything else, they have the right to hold them as their private property until their deaths ; but they should not dispose of them by will, nor should their relatives inherit them, nor can anyone else to whom they may devise them, except the church to which the lands belong. She also decreed that neither monks, regular canons, nor friars belonging to religious orders, have the right to make donations or wills : for, since they have relinquished the things of the world, they have nothing which can be called their own, and can neither give away, nor make bequests of property belonging to another.

TITLE XXII.

On Visitation Fees, Rents, and Contributions Made to Churches.

Prelates should exercise uniformity and moderation when they visit churches, monasteries, and other establishments included in their visitations, and not oppress those whom they are required to visit. For they should not act cruelly toward them by taking larger fees, or levying greater contributions than those which the Holy Church has instituted, and ordered should be taken. And although men are bound, each in his own place, to give them the above named dues when they visit them, prelates should, nevertheless, be careful not to receive them from them with arrogance, but gently, and with love, causing them no annoyance. They should do this following the example of St. Paul, who preferred to labor and obtain with his own hands wherewithal to live, when he preached to the people, than that they should pay his expenses, or be oppressed or scandalized for that reason. Wherefore, since in the preceding Titles mention has been made of churches, of the priests who conduct the services in them, and of their revenues, as well as of monasteries, and other religious houses which prelates should visit: it is proper to speak in this Title of visitation fees, tributes, and other dues which priests should receive from the above named establishments, by reason of their visitations, or the spiritual dominion which they exercise over them. It is also proper to explain what a visitation fee is; who should pay it; to whom it should be paid, and for what reasons, and in what way; and what prelates should do when they make their visits. Moreover, it will be shown under this Title, what quit-rent is, who can impose it, and when; and, after it has been imposed, whether it can be increased, diminished, or removed. Also what prelates have the power to impose a contribution upon the church, and for what reason, and in what ways they may exceed their powers in the things which it is their duty to do.

LAW I.

What a Visitation Fee Is, Who Should Give It, and to Whom.

A visitation fee is derived from the right to receive the expenses for food which should be given to the prelates of churches and other establishments which they visit. Every church, monastery, or other institution which has the right to be visited, should pay these fees. Where, however, churches are so poor that each of them, by itself, is not able fully to pay the fee, they should all unite, in order to do so without inconvenience, and should pay the fee in the bishoprics to their bishop, or to whomever he sends, and who makes the visitation in his stead, when the bishop cannot go, being prevented for some just reason. Moreover, visitation fees should be paid to archdeacons in their archdeaconates, and to archpriests in their jurisdictions; this however, should be understood to apply to localities where this custom prevails. Visitation fees should also be paid to the archbishop in his province, when, through the negligence of the bishops, he is compelled to visit; this however is understood to refer to those bishoprics where prelates are negligent in punishing their people and in governing their churches. These fees should also be paid to legates and messengers of the Pope, according to the authority which he gives them in writing.

LAW II.**For What Reason a Visitation Fee Is Paid, and in What Way It Is Done.**

When bishops, or other prelates, visit those establishments which they are required to, a visitation fee should be paid to them in each one, once a year, and no more. This is on account of the visitation, and for no other reason; except where, in some localities, the custom exists—which has been practised for a long time—of paying them twice a year; or where they have to be paid on account of some agreement which was entered into when a church was erected, by which he who built it established the rule that the fee should be paid a second time; or where something happens in a certain place by reason of which the bishop is compelled to visit the second time: and the fee should be paid in the following manner. Where an archbishop makes the visitation, he should be given the expenses of forty or fifty beasts of burden, a bishop, twenty or thirty, at the most, which he may bring with him. A cardinal should be paid for twenty-five beasts of burden; and archdeacon for five, or seven; and an archpriest for two. And what is stated concerning each one of these persons aforesaid, to whom provender must be furnished for so many beasts of burden, means if they bring them before they begin to receive the fees; and if they do not do so, then as many must be provided for as they are accustomed to take with them when they go elsewhere, and no more. This is understood to apply to churches which are so wealthy that they can do it without great inconvenience, and where they cannot, they should assist one another as stated in the preceding law.

Prelates should not demand very expensive food when they make their visitations, but such things as are fitting and of moderate cost, and should receive them with love and gratitude from those who bestow them. The Holy Church deemed it proper that when they travel for the purpose of making their visitations, they should not take with them hunting dogs or birds, but that they should act in such a way that it would not appear that they were seeking the pleasures or the riches of this world, but such things as pertain to God: as, for instance, preaching, and the punishment of men that they may be prevented from wrongdoing. She also forbade any prelate, while making his visitation, to receive his fee in money, but only in food; and also that neither he, nor any of his company should ask for, or receive money on account of any office which they hold, or because they may say that it is the custom to receive it, or for any other reason whatever. In addition to this, she forbade the prelate, or any person of his retinue to accept any gift, present, or service of any kind whatsoever, in addition to the visitation fee which they were entitled to receive: and she declared that whoever received anything of this kind should be accursed of God, and should not be free from the curse until he had returned double the amount.

LAW III.**Prelates Should Not Impose Voluntary Contributions or Taxes on the Priests of the People, and for What Reason They Have a Right to Do So.**

The Holy Church forbids prelates from oppressing the priests or the people, by levying contributions and taxes upon them. Where, however, a bishop is compelled to incur greater expenses than he is able to pay, in some matter which is clear and reasonable; in an instance of this kind he has a right to ask assistance of the priests of his bishopric, to pay his expenses, as far as this is proper. This would be the case where the Pope or the King sent for him, to ask his advice, or for some other purpose for which he has need of

him, or where he has to decide certain matters along with him, or with some one else, which will be for the benefit of his church. But the other minor prelates, such as archdeacons and archpriests, should not levy any tax or contribution, unless they do so by order of the bishop, or for some of the above-named reasons.

LAW IV.

In What Way Archbishops Should Visit Their Provinces, When They Find It Necessary to Do So.

The Holy Church deemed it proper to explain how prelates should act when they visit their churches: and it directed that when an archbishop wished to visit his province, on account of the negligence of the bishops, he should first visit the chapter of his own cathedral church, the churches of his own city, and all the other churches of his archbishopric, so that none of them would remain to be visited. And if any impediment should arise, by reason of which he cannot go and visit all the churches, each one by itself, he must cause all the priests and laymen of those which he cannot visit to assemble in some convenient place, and he must then visit them all together. After he has done this, he can then visit the bishops and prelates of his province, the chapters of the cathedral churches, the churches themselves and the people, the monasteries and conventual churches and chapters, and all other churches and religious establishments built for the service of God, and the priests and laymen of every locality; and he has a right to receive visitation fees only from those he visits, and from no others.

After he commences to visit any bishopric, whether he makes his visitation to all, or only to a part of it, and goes to another with the intention of visiting it, he has no right afterwards to return to the first to make his visitation, until he has visited all the other bishoprics of his province, or those to which he can go in safety, or until he begins again to visit his archbishopric, as above stated. It is understood by this that he has the power to visit, without hindrance, the bishopric which he began to visit, before he goes to another. Where, however, any just reason exists, why the above-named bishopric, or any part of it, should be visited rather than the others of the province, he has the power to return to it and leave the others. It is understood that he should do this where the bishop of the said bishopric requests it of him, he understanding that it is necessary; or where all the bishops of the province, or the majority of them, consent, or grant him permission to do so. In order to do this they should have the power, and grant it willingly, in order that it may not appear that they despise what is for the benefit of souls. Where bishops maliciously place obstacles in the way of an archbishop in a matter of this kind, he can ask permission of the Pope to make the visitation.

LAW V.

In What Way Archbishops Can Visit Their Provinces Again, Although the Bishops May Not Grant Them Permission.

An archbishop should make careful examination and visitation of all the bishoprics of his province, as stated in the preceding law. And, although he may have visited them once, he can, nevertheless, return and visit them again, in the way previously stated; but, before he does so, he must summon the bishops of the province, and ask their advice about it; and afterwards he can visit them by decision, and this means that judgment has been given for the same; and, in order that this may be certain and manifest to all men, he should

cause it to be put in writing. When he has done this in this way, he has the right to make his visitation, even though the bishops may not grant their permission. In this case, he should, however, be careful that those establishments which he himself did not visit in the other visitation, should be first visited by him; unless he thinks that others have greater need of it, as stated in the preceding law. Considering the decision aforesaid, which an archbishop can make, in the sense of a judgment, it is not understood that the same order must be observed in it as in rendering other judgments, nor will any appeal made from it under such circumstances be valid; because it would be a hindrance to what the archbishop is required to do by reason of his office.

LAW VI.

What Prelates Should Do Officially, When They Make Their Visitations.

An archbishop, when he desires to make a visitation anywhere, should go to the church, and the first things he should do when he arrives there, are to inspect the altars, and see whether they are in order; and whether the body of Christ is cared for as it should be, as well as the chrism; also whether the altars are complete, whether the treasure is there, and whether all the other ornaments of the church are well-kept and clean. After this he should examine the church, and see whether it has need of any repairs, or can be improved in any respect. Then he should assemble together all the priests of that neighborhood, and inquire of them plainly—but not by making them take an oath, or by using any other kind of compulsion—how they perform the duties of their office, as well as in saying the Hours as in the mass, and in administering the Sacraments, and in all the other things which they are required to do; and where he finds that all this is done properly, he should, in the first place, thank God for it, and afterwards thank them. Where they are guilty of any error, he should admonish them to act as the Holy Church commands. Moreover, he should inquire of them concerning their lives, and if he sees that it is necessary, he should occasionally reprove them with kind words, and sometimes with harsh ones; and where he ascertains that they have openly committed faults, he should make them correct them, imposing punishment upon them for this reason, according as he thinks they deserve, and is just. This he can do, in order that it may appear that their bishop was negligent in not punishing them, since their faults were committed openly. But where he finds that some of them are of bad reputation, and that their faults were not openly committed, he should send word to the bishop to make inquiry into the matter, if the latter should deem it necessary.

LAW VII.

What Things Archbishops Have Authority to Do, When They Visit the Bishoprics of Their Provinces.

An archbishop has authority to perform the rite of confirmation in the bishoprics of his province, when he visits them on account of the negligence of their prelates, and to consecrate churches, as well as to perform the other acts which pertain to the office of bishop. He can do even more than this, for he can assemble all the people of that locality, visit priests as well as laymen, and exhort them to keep and observe the Faith of Our Lord Jesus Christ, and avoid, as far as they can, committing mortal sins, as, for instance, false testimony, perjury, adultery, and all others of every description whatsoever; and that no one should do to another, what he does not wish he should do to him; and to believe that they shall be raised from the dead, and be judged by Our

Lord Jesus Christ to receive either reward or punishment, according as each one shall deserve; and after he has done this, he can, upon another day, visit another locality, and do all these things, as has been stated.

All that is mentioned in this law, and in the others preceding it, as to what an archbishop should do and observe during his visitation, and also concerning the fees he should receive, bishops and prelates are required to observe and do in those localities where they make their visitations.

LAW VIII.

What Quit-Rent Is, and Who Can Impose It.

A special contribution which bishops receive every year from some churches, is called quit-rent, or tribute; and this is paid for two reasons. The first is, that the churches may show to him to whom they pay it, that he has some authority over them. By the second a token of exemption is signified to, for, by its payment, the church is released from other services. There is a distinction in the imposition of this quit-rent; for there are certain localities in which the Pope imposes it, and others where the bishops impose it within the limits of their diocese: and in the localities where the Pope imposes it, those churches belong especially to the Church of Rome; and, by reason of this quit-rent which they pay the Pope, it is understood that they are free, and exempt from the jurisdiction which other prelates are accustomed to have over them: and those places in which the bishops impose this contribution are understood to be, in every instance, under the authority of him who imposes it. This is the case where a bishop gives a monastery, or other religious institution, a church and retains for himself a certain income, which must be paid to him regularly every year; for, on account of this rent which is retained by him, it is understood that he exercises authority over the said church. This would be the case also where he exempts a church from the dues which it owes him, reserving for himself a certain amount to be paid to him annually.

LAW IX.

What Other Persons Can Impose Quit-Rent on Churches.

Others, besides those mentioned in the preceding law, collect quit-rent from churches and have the right to impose it, with the permission of the bishop; as, for instance, abbots, and other prelates of certain orders, who have secular churches which obey them in temporal matters, and patrons, archdeacons, and other minor prelates, who have authority to do this. Where any one of the persons aforesaid makes a claim of this kind before a judge, stating that he had a right to certain dues from some church, and the party against whom he made the said claim, enters into an agreement with him, this agreement will be valid, in order to collect the rent imposed by it upon the church to be paid during the life of him who made it. If, however, the Pope, or the bishop in whose bishopric the church was situated, should give his consent to the contract, it will be valid for all time; for without their permission, or that of someone else who has the right to grant it, no priest has authority to make his church pay contributions after his death, on account of any contract which he entered into during his lifetime.

LAW X.**When Quit-Rent Can Be Imposed Upon Churches, and Whether It Can Be Increased or Diminished After It Has Been Imposed.**

The Holy Fathers specified certain times at which quit-rent could be imposed upon a church, and gave for each time certain reasons why this could be done. These are of four kinds, namely; when a church is built, endowed, consecrated, or granted exemptions: for when it is erected, or endowed, it can then be established how much shall be paid each year, by way of quit-rent, to its patron; when it is consecrated it can be determined how much it can give to the bishop; and when exemptions are granted it, there can also be stated how much it shall pay to the Pope, to the bishop, or to any of those who have conferred privileges upon it, as stated in the third law before this. After one quit-rent has been imposed in any of these ways upon a church, another cannot be imposed, or the first one increased. That would be a new tribute which is not levied on any of the four above named occasions, and, if it were levied in any other way, it would not be valid, even if this were done by one of those mentioned in the preceding law who have authority to do so: and where men give their consent to this tax willingly, in the beginning, after it has been imposed, they are required to pay it, even though they should not desire to do so.

LAW XI.**For What Reasons the Quit-Rent of Churches Can Be Increased.**

Quit-rent cannot be increased after it has been imposed, as already stated, this however should be understood in the following way, namely; where, when it was imposed, a certain amount of money, or of something else, was specified should be given on account of it. Where it is not imposed in this way, but it is merely stated that fees or food shall be given, and the amount is not indicated, in such a case it can be increased. This would apply where food is to be given to some convent, and afterwards the convent increases in numbers, so that it becomes larger than it was when the quit-rent was imposed upon it; for, under these circumstances, or others similar to them, the amount of food can be increased, if the revenues of the said church have subsequently increased to such an extent that this can be done without causing it any more inconvenience on that account than formerly. Bishops have the power to abolish, or lessen the quit-rent of churches, but they cannot do so without the consent of their chapters, for where they proceed in any other way their act will not be valid.

LAW XII.**What Things Prelates Who Demand Tribute, or Service from Certain Churches, Are Required to Prove.**

When a prelate, or any other man, claims that tribute, or quit-rent should be paid him by a church, or some other institution; in order for him lawfully to have it, he must show for what reason he is entitled to it, and at what time it should be paid him. It is understood that it is necessary for him to show these two things when he is not in possession of the said church; but where he, or those who preceded him in his position, have received the tribute for so long a time that they do not remember when it was levied, or when it was first paid them, he has then the right to demand it and hold it, provided he can prove that forty years have elapsed during which he and his predecessors received it; and it is also necessary for them to believe that it was levied, and that they

lawfully received it. But where a church, or a man renders service to a prelate, or to any other person, of his own free will, by giving him food, or anything else whatsoever, although he may have been accustomed to give it for a long period of time, it cannot, for this reason, be demanded of another that he should give it, as it were, upon compulsion: nor is he required to give it, if he does not desire to do so; for, as he bestowed it of his own accord, so he can desist when he wishes.

LAW XIII.

For What Reasons Ecclesiastics Can Levy Taxes on Churches.

Prelates should not impose contributions upon their priests, or levy taxes upon them, or demand other things of them, except such as the Holy Church permits them to have: however, if anything should happen on account of which they are compelled to levy a tax, or exact a contribution under circumstances which are just and reasonable, as stated in the law of this Title which commences with: "The Holy Church forbids;" in a case of this kind they have authority to do so. Where doubt arises in regard to the matter, whether it is reasonable or not that they should ask for it, the superior of the prelate who demands the tax or the contribution, must decide the question. And in order that prelates may avoid harassing priests, the Holy Church explains to them the way in which they should act, and declares, that as they themselves should desire to have freedom with respect to their own affairs, they should be willing for their inferiors also to enjoy it; and as they do not desire to be harassed by their superiors, neither should they wish that their own inferiors should be oppressed.

LAW XIV.

In What Ways Prelates of the Holy Church Exceed Their Authority.

Prelates oppress their inferiors in many ways, exceeding their authority more than is becoming to them, and acting contrary to the prohibition of the Holy Church: and this they do by imposing taxes upon them, and doing other things, without reason and without justice, which they should not do; as, for instance, when the Pope sends to them for assistance, or despatches legates or messengers to make certain collections, and they are required to pay their expenses. When prelates levy these taxes, they cause them to be collected from the priests and churches, and exact more than the sum which the Pope demands of them, or than the expenses amount to which they are required to pay the legates; and, instead of assisting them in the payment of this tax, they deprive them of the property which they possess. And, because this fault which they commit, in not having the fear of God and acting contrary to His law by which He forbade them to do evil; and moreover, because they did not respect the rights of the Pope, the Holy Church imposed upon them, by way of punishment, that they should return the entire amount which they collected, in excess, to those from whom they received it, and that, in addition to this, they should give an equal amount to the poor. We, also, decree that bishops, abbots, and other prelates should avoid this, when it happens that the king has need of assistance from them and from the priests of churches; as, for instance, when he is carrying on war against the enemies of the Faith, or for any other just purpose; for, under such circumstances, prelates should not levy an excessive tax on the churches, nor on the priests over whom they have authority on account of the assistance which they desire to render to the king; for, if they act in a contrary manner, they will err in two ways, first, by levy-

ing these taxes in the name of the king, and not giving them to him; second, by harassing the priests so that they will be compelled to make a complaint to the king, thinking that their oppression proceeds from him.

LAW XV.

In What Ways Prelates Harass Their Inferiors by Exceeding Their Authority.

Prelates are guilty of excess in still another way by harassing their inferiors, and proceeding rashly against them without reason and without justice; as, for instance, when they excommunicate them, or place them under interdict, not observing the forms established by the Holy Church stating how they should act, as mentioned in the Title concerning Excommunications: for excommunication (which is a very serious penalty in the Holy Church) should not be inflicted upon any one without certain and manifest reason, or on account of small and trivial matters. Moreover, they exceed their authority when they decide disputes precipitately, not being willing to ask advice of their chapters or their priests. They are also guilty of oppression when they are harsh and cruel, or very weak in rendering judgment: for, in order to do this properly, they should display moderation in the decision of matters of this kind, so that, in dispensing justice, they may not be very severe; nor, on the other hand, fail to act justly in any respect. They are guilty of annoyance in another way, when they preach arrogantly, or when they impose Penance on sinners, or weak persons, not having pity on them, or sympathizing with them: for the more they disdain them, and hate others in this way, the more serious fault they commit, and they are, for this reason, the greater sinners.

LAW XVI.

On Prelates Who Exceed Their Authority in Other Ways.

Prelates, by ordaining wicked or ignorant priests, violate their obligations. They do this that they may have more priests, thinking that in this way they gain greater honor, and after they have thus ordained them without discretion, they are compelled to appoint many of them to churches where there are few parishioners. For this reason they have to live dishonorably and in great poverty, bringing contempt on the Holy Church: and, by acting in this manner, the said prelates do not observe what is stated in the law, namely; that it is better to have a few good priests than many bad ones; and they also violate their obligations in another way, by desiring that persons should give them quantities of prepared food. They are, moreover, guilty of excess by exerting all their efforts for the collection of great wealth; by contracting great expense in building churches and in decorating them; and in endeavoring to have the walls of the latter painted and ornamented; but they exercise little care in looking for educated and honorable priests to serve them.

LAW XVII.

For What Reasons Priests Err by Committing Other Excesses Which Are Not Becoming to Them.

Gestus, in Latin, means behavior, in Castilian, and there are some prelates who conduct themselves arrogantly and with pride, and they err greatly in committing this excess, which does not become them. Such conduct is contrary to the law which says that in the church they ought to have a higher and more honorable place than the others, but at home that they should be the companions of the priests, yet should act in such a way as not to be too famil-

iar with them, so as to render themselves liable to be treated with contempt. They are also guilty of excess in taking larger fees than they ought, and, therefore, the Holy Church imposes as a penalty upon them that any prelate who did this (that is, exacted fees, or anything else from those subject to him, by threatening them, or by employing any other kind of compulsion without reason and without law, by means of which they would be forced to give them to him, rather through fear than voluntarily), should return to them fourfold the whole amount which he had received in this manner. They violate their obligations in still another way, when they reduce the fees of other minor prelates of their churches and bishoprics.

LAW XVIII.

How Prelates Are Guilty of Excess in Another Way.

Prelates are guilty of excess in still another way; as, for instance, when the benefices of their churches become vacant, and they do not wish to give them to men that they may occupy them, but reserve them for themselves; and this they should not do, except for the reasons set forth in the Title concerning Benefices, in the law which commences with: "Prelates should give all the offices, benefices and livings of the Holy Church;" and where any persons act contrary to this regulation their superior should impose such a penalty upon them as he deems reasonable. They still further violate their obligations when they ask abbots and other monks, to give them something, or to perform some act which is against the rules of their order; and those of whom such a request is made are not bound to comply with it, unless the prelate is in possession of what he asked for; as, in that case, they themselves cannot take it away from him, except through the decision of his superior, who has authority to determine the matter.

LAW XIX.

On the Excesses Which Prelates Commit with Regard to Monks by Violating Their Obligations.

Prelates also violate their obligations when they infringe upon the privileges of monks, and this they should not do. Moreover, monks, by reason of the exemptions and privileges which they enjoy, should not be guilty of excesses, by making a bad use of those privileges, and by exceeding what has been granted them; but they should live humbly, according to their rules, so that bishops and other prelates may be benefited by observing their privileges, and pay them the compliment of trying their malefactors. Abbots, and other prelates of religious orders, are guilty of excess when they are not content with their rights, and meddle in complaints concerning marriages, in giving letters of pardon, in imposing public Penances, and in performing other similar acts which belong to the duties of bishops: For which reason the Holy Church forbade that they should employ themselves in doing things of this kind, for where they do, they are liable to punishment, and to danger, according as their superiors may deem proper, unless the Pope grants them permission to do these things, or they gain the right, by existing custom, because this practice has long prevailed. In the above-mentioned matters, as well as in others, prelates exceed their authority, as stated in the Title on Bishops and Priests.

TITLE XXIII.

On the Observance of Festivals and of Fasts, and How Alms Should Be Given.

The saints endured hardships and very great martyrdom, through the love of Our Lord Jesus Christ; and this continued even unto death, which they underwent naturally, according to the judgment of the world, but spiritually, as far as God was concerned, they did not die, but their death rather resembled a birth: for as a child is in darkness, while it is enclosed in the womb of its mother, and when it is born perceives the light, in like manner, the saints when they die, leave the hardships of this world, which consist of affliction and darkness, and see God, who is the true light and eternal rest: and, for this reason, those who experience such a death should not be considered as having died, but rather as having been born again, and as living a life in quiet and in peace. For the Scriptures say of them that when the souls of the saints pass from this world to the next they are in the hand of God, and the torture of death does not affect them; and although they seem to the eyes of careless men to die, they are in peace. Wherefore, since God honors them in this world by showing that He considers them His friends, and by performing many and marvelous miracles through them, and keeps them with Him in His holy kingdom in the next world; it is just that all men, and especially Christians, should honor them, and they should do this for three reasons. First, to manifest gratitude to God, who granted so great a favor to men that he desired that those who were good among them should become saints. Second, by showing gratitude to them, because they deserve to be saints. Third, in order that they may pray to God for us, that He may pardon our sins, and enable us to perform such works that we may deserve to go where they are; and this gratitude should be evinced by honoring their festival days, and the churches where their bodies lie, or which were built in their names.

Since in the preceding Titles we treated of churches and of the priests that serve them, it is proper in this one to speak of the festivals of the saints in whose names they are instituted, and also explain, in the first place, what a festival means; how many kinds there are; how Christians should honor and keep them; and, moreover, for what reasons they should fast during their vigils, and on other fasts established throughout the world. We shall speak afterwards of alms and how they ought to be bestowed, and of all things which should be observed in regard to them; and why on festivals and fast days men have greater pleasure in doing those things, than at other times.

LAW I.

What a Festival Means, and How Many Different Kinds There Are.

A festival means an honored day on which Christians should hear the Hours, and do and say things which may redound to the praise and service of God, and to the honor of the saints in whose name they do them: and a festival of this kind is one which the Pope orders to be celebrated, as well as every bishop in his bishopric, along with the assembly of the people, in honor of some saint who has been canonized by the Church of Rome.

There are three kinds of festivals, the first, those which the Holy Church orders to be observed in honor of God and the saints; as, for instance, Sundays, the birthday of Our Lord Jesus Christ, and those of Holy Mary, of the Apostles, and of the other male and female saints. The second are those

which emperors and kings order to be observed in honor of themselves; as, for instance, the days on which they are born, those of their sons who expect to reign, or the days of which they have been successful in great battles with the enemies of the Faith by conquering them, and such other days as they order to be observed in honor of themselves, which are treated in the Title on Citations. The third kind, called *Ferias*, are instituted for the common benefit of men, as, for instance, days upon which fruits are gathered, as stated in the aforesaid Title on Citations.

LAW II.

How Festivals Should Be Observed.

All festival days referred to in the preceding law should be observed, and especially those of God and of the saints, for the reason that they are of a spiritual character: for all Christians should keep them, and, in addition to this, no judge should render a decision, or issue a summons upon them, nor should other men work on those days, or perform the labors which they are accustomed to do on others; but they should endeavor to go decorously and with great humility to the church whose festival they are keeping, if they have a church, and if not, to some other, and listen to the service with great devotion; and, after they have left the church, they should do and say such things as tend to the service of God and the benefit of their souls.

Anyone who, through contempt of God and of the saints, is unwilling to observe the festival days, as above stated, should be admonished concerning it by the prelates, and, after he has been so admonished, he can be excommunicated until he makes reparation for the fault which he committed. The second kind of festival days, which should be observed in honor of emperors and kings, as well as the third kind called *Ferias*, which should be kept for the common benefit of men, are treated of in the Title on Citations, where the manner in which they should be observed is explained.

LAW III.

Priests Should Keep the Churches Clean and in Order to Do Honor to the Festivals.

Priests should keep the churches neat and clean at all times, as being places where the body and blood of Our Lord Jesus Christ are consecrated, and especially should this be done on festival days. For a festival cannot be properly honored if the place where this is done is not clean and neat, and there are three reasons for this. First, in order to show that they love God, and have good-will for his service. Second, because a great obligation exists to honor those persons on account of whom the days are honored. Third, because people come and remain to hear the service more willingly; for it is natural for men to be pleased with what is beautiful and elegant. Wherefore, when priests act contrary to this regulation, their prelates should impose a penalty upon them on this account, according to what they think they deserve; and where a prelate is so negligent as not to desire to do this, his superior should inflict the penalty.

LAW IV.

Of the Fasts of the Vigils, and Those Which the Holy Church Orders to Be Observed, and How Many Kinds of Them There Are.

Saints' days have vigils, which Christians are required to observe by fasting, besides the fast which the Holy Church established to be kept: and these

fasts are of three kinds. The first is the great fast which concerns all Christians, and which they are required to keep; that is they should not, during its continuance, commit sin, or follow their inclinations in the pleasures of this world, and this fast is thorough and complete, because it makes a man holy and clean. The second fast is one which should be observed with moderation, by men avoiding all excesses of eating or drinking. The third is, to eat once a day, and no more, and not to eat meat or anything which is obtained from it, as eggs, cheese, milk or butter; and men should be more on their guard during this fast, for just as they ought to restrain themselves from over indulgence in food, so it is also proper that they should avoid the other pleasures and vices of the flesh which defile and fetter the soul; for neither fasting, nor prayer, nor performing other good works, will avail a man for the salvation of his soul, if he does not keep his mind free from sin and restrain his tongue from evil speaking.

LAW V.

Which Fasts Should Be Constantly Observed, and Which Ones on Appointed Days, and at Certain Times.

Men should fast in three ways, as stated in the preceding law, and two kinds of fasting they should observe constantly, but the third upon appointed days, and at certain times. Those which should be observed upon appointed days, are as follows: the vigils of the Apostles—except those of St. Philip and St. James, who have no fasting vigils, for the reason that they come in the time between Easter and Pentecost, and the fast is forbidden in honor of these two festivals—and, in addition to these, the vigil of St. John the Evangelist, because it comes in Christmas week. There should be fasting on the vigils of the other saints when it is ordered by the Holy Church, and is the custom; and men should fast at certain times, as, for instance, during Lent, which consists of forty days; and this is the case because Our Lord Jesus Christ fasted that many days in the desert, and did neither eat nor drink. Moreover, persons should fast during the four Ember Days, which come in the four seasons of the year, as stated in the fifth Title of this book, in the law which commences with: "Every primate and patriarch."

LAW VI.

For What Reasons Christians Fast in Some Localities on Saturday.

Saturday means a day of rest, because it comes between Friday, on which Our Lord Jesus Christ was crucified and is a day of sadness, and Sunday, on which he arose from the dead which is a day of joy; for which reason it is customary to fast in some places on Saturday, and also because the Apostles were concealed on Friday and Saturday, through fear of the Jews, and fasted with great sadness, and were all, as it were, forsaken, and the faith and the hope of Our Lord Jesus Christ that he would arise from the dead, and accomplish all the other things which he had promised, alone remained in Holy Mary; and therefore they celebrate the festival of Holy Mary on Saturday. Although the custom of fasting on Saturday does not prevail in some localities, still, no one should eat meat on that day, except for the reasons stated in the preceding law. Moreover, where the festival day of some saint to whom vigils belong, happens to come on Monday, persons should fast on Saturday, and not on Sunday, because this is a day on which men should not fast, in honor of the resurrection of Our Lord Jesus Christ.

LAW VII.

What Matters He Who Desires to Give Alms Should Consider.

Alms are very pleasing to God and man, and it should be a source of great pleasure to him who can give them at all times, and especially on the festival days and fast days mentioned in the preceding laws. However, he who is not able to bestow alms upon all persons, should make a distinction among those to whom he gives, as to which of them he should give, and to which of them he should not; and in order to do this perfectly, he should carefully consider nine things. First, as to whether he who asks alms is of his belief, or of some other, for he ought rather to give to his Christian neighbor than to another who does not acknowledge his religion; because he would commit a great sin if he saw anyone belonging to his Faith, suffering with hunger, and did not go to his assistance, when he had the power, but should give to some one of another belief; and especially when the former was not willing to beg on account of being ashamed to do so. Second, he should observe the affliction under which the poor person suffers; for he should rather bestow alms upon a person who is in captivity, in order to liberate him from it, than upon anyone else. The third is, that he should consider the poor person who is in prison and is undergoing punishment for a debt which he owes, and not for any wickedness which he has committed, for he should rather be afforded assistance than another who is not in such adversity; for although men should always be merciful to those in trouble, it is more suitable to be so to such as are good, and do not deserve to suffer punishment for what they have done. The fourth is, that the time in which alms is to be bestowed should be considered; for where it happens that anyone is about to be punished unjustly, and this can be avoided by a contribution made for his benefit, it is better to bestow alms upon such a person as this, than upon another who is not in such great distress; for men should place more value upon the life of a man in trouble than upon the property which they donate for his sake. The fifth thing is, that alms should be given with moderation; for they should not be bestowed upon only one person, or at only one time, but be divided among many persons, and given on many days, in order that more may be accomplished with them, and more men be favored. However, where any man desires to abandon the world, and give all his property for the benefit of God, in this case he can give it in an hour, if he desires to do so. The sixth thing which should be considered is, whether the donor is related to him to whom he desires to give alms; for where persons wish to donate property for the sake of God, and have poor relations, they should rather give it to them, than to strangers; not for the pleasure they may derive from making them rich, but to give them something on which they can live, that they may have no reason to commit sin: for it is much better that they should be assisted by their relatives, than that they should go about in great shame, begging of strangers. The seventh thing is, that the age of the party who asks alms should be carefully noted, because it is much better to give to old men who cannot earn their living, than to those who are young. The eighth is, that the feebleness of the poor person should be examined, for alms ought rather be given to the blind, the deformed, the sick—the infirmity under which they labor being taken into consideration—than to those who are healthy. The ninth thing is that the condition of the poor person should be considered; for he who desires to bestow alms should preferably bestow it upon the poor who are of noble descent, and on other good men who once possessed great wealth, and afterwards have fallen into dire poverty, not on account of any wickedness which they have committed, but through misfortune, than upon other poor persons who do not occupy as high social positions as they do.

LAW VIII.**Whether Alms Should Rather Be Bestowed Upon a Father Who Believes in Another Religion, Than Upon a Stranger Who Believes in Ours.**

A doubt may arise when two persons ask alms of a third, one of whom is his father and a heretic, or a believer in some other religion, and the other a Christian who bears no relationship to him, as to which of these alms should be given, to the heretic father, or to the Christian stranger, where the party did not have sufficient to bestow upon both to save them from death: and although it is stated in the preceding law that alms should be bestowed upon a Christian rather than upon a believer in another religion, nevertheless, the holiness of the Church was so great that, being influenced by pity, it removed the above-mentioned doubt in the following manner, namely; by declaring that alms should preferably be given to the father, on account of the relationship existing between the parties, although he may not be a Christian, than upon the other who is so, although he ought to love the Christian more in his mind, by reason of the Faith. This is permitted because Our Lord God stated it to Moses in the ancient law, and Jesus Christ afterwards confirmed it in the new law, when he said: "Honor thy father, and thy mother, that thou mayest live long upon the earth." However, where the father has something to eat, by means of which he can be prevented from dying, and the stranger has nothing, alms should be bestowed upon the stranger rather than upon the father. Where anyone desires to give alms to another, because he wishes him to pray to God to pardon his sins, he should preferably bestow them upon a good stranger, than upon his father, or upon any other wicked relative.

LAW IX.**How Many Kinds of Alms There Are.**

There are both spiritual and corporeal alms, as stated in the law of the Holy Church which makes a distinction between them in the following manner, showing that spiritual alms are of three kinds: first, by **pardoning**, as where a person has suffered injury or wrong from another, and he pardons him for the love of God. The second is, by **punishing**—also for the love of God—him who is known to have erred. The third, is by **teaching** those things which contribute to the safety of the soul of anyone who is ignorant of them, and to conduct him in the way of truth.

Corporeal alms consist in works of mercy which are the following; to give food to the hungry and drink to the thirsty, to clothe the naked, and visit the sick and him who is in prison; and on the Day of Judgment God will demand an account of these things from every person, whether he did them or not, as stated in the Gospel. Alms, however, which come from the mind, and are called spiritual, are better than those called corporeal, and which relate to temporal affairs: and this is apparent for three reasons. First, because as the body is governed by temporal matters, so is the soul governed by those which are spiritual: wherefore, to the same extent that the soul is greater than the body, so the things by which it is controlled are greater and more precious than those of the body. The second is, because spiritual alms can never be lacking to anyone, for whether a man be rich or poor he can always bestow them, if he desires to do so; but corporeal alms cannot be given if the person who wishes to bestow them has not the property by means of which men exist in this world. The third is, because spiritual alms are directed to the salvation of the soul, and are of profit without the temporal: because it might happen that under certain circumstances, corporeal alms could not be bestowed, and spiritual alms might be. For, as the Apostle St. Paul said: "If anyone should give

to the poor all he has, or should put his body into the fire to be burned, and should not do this with charity, and for the love of God, it would not profit him for the salvation of his soul." Moreover, he who gives alms to a poor person, not for the reason that he grieves for him in his heart, or with the intention of assisting him to endure his affliction, but in order to get rid of him, on account of the annoyance which he causes him by begging, loses the benefit of what he gives, and will receive no reward from God on that account: and this is the case because he is not impelled to act through good-will, of which spiritual alms consist.

LAW X.

With What Things a Man Can Bestow Alms.

Every Christian should take pleasure in bestowing alms, for it is something which gives great pleasure to God and atones for sins; and, in addition to this, a man is of greater value in this world, for it is a well-recognized kindness to do good to those who are in need of it. But he who desires to bestow alms perfectly, should do three things; first, he should act with justice; second, he should act in an orderly manner; third, he should have good intentions when he acts.

In order for alms to be bestowed with justice, it is necessary for a man to give them out of his own property, which he earned lawfully and not by fraud, for if he should do so with that which was dishonestly obtained, it will not profit him; as, for instance, where he has acquired property by usury or simony, or by means of draughts or dice; for by whatever means he may have possession of said property, for the reason that a suit may be brought for it, and he be required to return it according to law, he therefore cannot bestow it as alms. Moreover, alms cannot be given out of gains which men acquire by means of robbery or theft, because they are not their own. However, out of the property which bad women earn by committing sin with men, and men obtain by false statements, and that which buffoons and mimics collect, alms can be bestowed; for the reason that although those who give them something under any of these circumstances act as they should not, nevertheless, the ownership of the property passes to him who receives it, so that it cannot afterwards be demanded of him.

LAW XI.

In What Way He Who Belongs to a Religious Order Can Bestow Alms.

Some persons, learned in the law, have declared that monks, regular canons, and other members of religious orders who have no right to hold property, cannot give alms, and others say that they can do so, and for this reason the Holy Church made a distinction in the law in the following way, namely, that where a monk, or other member of a religious order held any dignity or office in it by means of which he assisted in making collections, he had a right to bestow alms out of the excess of what he was obliged to account for; which no other monk had power to do without the order of his superior. Where, however, a monk sees a man at the point of death from hunger, he has a right to give him alms, even if he had not asked permission of his superior; and even though his prelate forbade him, in a case of this kind he ought not, for that reason, to fail to do so, for he should rather obey God who ordered him to perform this act from charity, than man who forbade it from cruelty. If his superior should order him, or forbid him, to do something which is not contrary to the commandments of God, or concerning which a doubt exists as to

whether it is, or is not, under such circumstances the inferior is not required to obey his superior. Moreover, when one of the persons aforesaid has gone to school or to Rome, or anywhere else, by order of his superior, he can bestow alms, in a moderate way, upon any poor person whom he sees has need of it: for since his superior gave him permission to go thither, it is understood that he granted him authority to perform such righteous and honorable acts as other priests perform, and also to observe the good customs of those with whom he lives; and this also the Holy Church directed men who belong to other orders, and have no property, to do.

LAW XII.

How a Wife Can Give Alms Out of the Property of Her Husband.

A married woman has no right to bestow alms without the consent of her husband, nor can she promise to perform a pilgrimage, or a fast, or to be chaste so far as he is concerned, without his permission; and although her husband may, at first, acquiesce in any of these things, if he afterwards orders her not to do them, the wife can break her promise; and this is because the husband is, as it were, the lord and the head of his wife; where, however, she has any property of her own, separate from his, as any capital which is not in the hands of her husband, nor over which he has any control, she has the right to bestow it, for the sake of God, without his order. Moreover, whatever is in the possession of the husband, as, for instance, bread, wine and those other articles which men keep in their houses by way of provisions, and which the wife has charge of according to the custom of the country, she has a right to give in moderation to the poor, according to the amount of the property, not exceeding her duty in that respect. She should do this with the intention of not causing annoyance to her husband, even though he may have, at times forbidden her to do so; for husbands are accustomed to forbid this in order that moderation may be observed in giving, and that their wives may not be too profuse, and their property be greatly diminished in consequence.

A wife should also bear in mind that if her husband should see such an afflicted poor person, he might be pleased to give him something, for the love of Our Lord God, but if she knew that it would annoy her husband, or that he would abuse her on this account, she should not give the alms, although she may be sorrowful at heart because she cannot do so. When, however, she sees a poor person in such distress from hunger that he is about to die, she could not avoid giving him something, although it may vex her husband, and he has forbidden it, for the reason above-stated in the preceding law. This rule also will apply where a son is under the control of his father, for he can bestow alms out of the property which he holds in his own right, as stated above concerning the wife.

LAW XIII.

Whoever Bestows Alms Should Do So With Regularity.

Alms should be bestowed with regularity, which is the second matter which should be considered before this is done, as stated in the fourth law preceding this one. For, as it is a work of charity, man should first consider himself, by avoiding sin and not acting contrary to the commands of God, and afterwards he should do good to others who have need of it. On this account King Solomon said: "If you desire to give pleasure to God, it is proper, in the first place, that you have mercy on your own soul." This also agrees with what Our Lord Jesus Christ said in the Gospel: "First remove the beam from

your own eye, and afterwards you can remove the straw from your neighbor's eye:" and by these words he made it understood that man should first bestow alms upon himself by removing his own sins, and that afterwards he could do this for others. The second thing which he who desires to bestow alms should carefully consider, is, whether it is his intention to do so from the love of God, and not for the sake of the temporal praise which he hopes to receive from men, and which is vainglory; for if he should do this on account of the praise men may give him for it, God will have no reason to be pleased, or any cause to reward him; and therefore Our Lord Jesus Christ said in the Gospel that those who do good in the sight of men, for the sake of being praised by them, shall in that receive their sole reward.

TITLE XXIV.

On Pilgrims and Romeros.

Men become Romeros and pilgrims in order to serve God and honor the saints, and, for the pleasure of doing this, they leave their families and their towns, their wives and their houses, and all that they have, and travel through foreign countries, mortifying their bodies and spending their property, while visiting sanctuaries. And since men with such good and holy intentions wander through the world, it is but just that while they are engaged in doing so they and their property should be protected, so that no one may attack them or do them harm.

For the reason that in the preceding Titles we treated of fasts, and of the festival days of the saints, and how alms should be bestowed, we desire to speak here of the above named Romeros and pilgrims, who go to visit and honor the shrines: and, in the first place, to explain what the words Romero and pilgrim mean; how many kinds of them there are; how pilgrimages should be made; how pilgrims should be protected and honored in the places where they travel, or seek shelter: and what privileges and superiority they enjoy, more than other men, while on a pilgrimage: and also how pilgrims can make their wills; what obligations arise between men traveling under the direction of another on a pilgrimage; and what punishment those deserve who are guilty of violence, wrong, or dishonor, while they are on a pilgrimage.

LAW I.

What the Words Romero and Pilgrim Mean, and How Many Kinds of Them There Are.

A Romero means a man who leaves his own country and goes to Rome, in order to visit the holy places where rest the bodies of St. Peter, St. Paul, and the others who received martyrdom there on account of Our Lord Jesus Christ. A pilgrim means a stranger who goes to visit the sepulchre of Jerusalem, and the other holy places where Our Lord Jesus Christ was born, lived, and suffered death for sinners; or one who goes on a pilgrimage to Santiago Oviedo, or to other sanctuaries of a distant and foreign land. And although a difference exists between the words Romero and pilgrim, nevertheless, as people commonly use them, they have the same meaning. There are three kinds of Romeros and pilgrims; the first is, when they go of their own free will, and without any compulsion on a pilgrimage, to any of these holy places; the second is, when this is done on account of some vow or promise made to God; the third, is when any one is required to do it by way of Penance, which has been imposed upon him and which he has to perform.

LAW II.

How a Pilgrimage Should Be Performed, and How Pilgrims and Their Property Should Be Protected.

Pilgrims should make their pilgrimages with great devotion, and with meekness, by speaking and acting decorously, and should avoid doing wrong, not engaging in trade, nor committing knavery on the way; and they should always seek shelter as soon as they can, and also travel with companions, in order to be protected from injury, and to better perform their pilgrimage.

The inhabitants of the lands through which pilgrims pass should honor and protect them; for it is but just that men who banish themselves from their country with the good will to serve God, should be welcomed by others in their own, and that they should refrain from doing them wrong, or employing force against them, or inflicting injury, or dishonor upon them. For this reason We consider it proper, and we do hereby decree, that all pilgrims who go to Santiago, together with their companions and their property, shall go and come safe and sound through all our kingdoms; and moreover, we decree that they may purchase the things of which they have need in all places where they solicit shelter. Also, that no one shall dare to change the lawful weights and measures by which other persons sell and purchase: and that anyone who does so shall be punished for it, according to the discretion of the judge before whom complaint is made.¹

LAW III.

What Privileges Pilgrims and Their Property Enjoy While on a Pilgrimage.

Not only should the property which pilgrims take with them while going on and returning from a pilgrimage, be safe and secure, but also that which they leave at home. For this reason the ancient wise men who made the laws, as well as those who treated of the rights of the Holy Church, ordained that no one should employ force against the property of pilgrims, or enter upon, or steal, or remove it from the possession of those who hold it: and where they are deprived of its possession by force, or in any other way, that the servants, friends, neighbors, slaves, or laborers of the pilgrims, can bring suit for, and

¹ Pilgrimage, from the earliest times, has been one of the most praiseworthy undertakings of the credulous and ardent devotee. It was always in high favor with the priesthood of every religion, not only for the reason that it became a constant, unfailling, and immensely profitable source of revenue to the ecclesiastical treasury, but also because, through the fanaticism it encouraged, and the sense of dependence it inspired and promoted, it greatly increased the influence and importance of the spiritual guides of the people. The most sacred and famous shrines of the mediaeval world were those of Rome, Jerusalem, and Santiago. The first two of these owed their importance to the associations, largely apocryphal, mentioned in the text; the third was revered because it was the mythical burial place of St. James, the patron of chivalry, and the protector of the people of Spain.

A thousand absurd legends were invented and published to enhance the awe with which these sacred places were regarded, which contributed, in no small degree, to the moral and intellectual degradation of the masses. The numbers who annually paid their devotions to these shrines, when the difficulties and dangers of the undertaking are considered, are almost incredible. The highways were constantly covered with pilgrims going and returning. During 1434 nearly three thousand, from England alone, visited Santiago. In a single month of the first Jubilee, in 1300, two hundred thousand pilgrims journeyed to Rome. The greatest merit of all, however, attached to a visit to the Holy Sepulchre. The Crusades were, in fact, only pilgrimages on a gigantic scale, and the superstitious excesses of Europe attained their maximum during this "epidemic madness," as it has been so aptly designated. It was not without reason that the devout, who engaged in the perilous enterprise of a voyage to Jerusalem, were enjoined to conduct themselves with piety, moderation, and decorum, for the vices of which they were guilty, and the atrocious acts of violence which they committed while employed on a holy errand, excited the amazement and horror of the world. The wealthy were attended by musicians, buffoons, and women of ill-repute, to while away the tedium of the journey; the poor found their relaxation in the open and shameless practice of every species of carnal indulgence. In some respects, the pilgrimage and the Crusade contributed to the benefit of humanity. They enlarged the minds of men by travel. They familiarized them with the marvels of Oriental civilization, whose luxury and culture presented such a marked contrast to the barbarism and degradation of Europe. They added much to the comforts of life by the knowledge of the arts introduced by returned wayfarers from the Holy Land. These benefits resulting from Crusade and pilgrimage were, however, largely counteracted by the ruin wrought to industry and learning, by the vast hordes of fanatics who poured over the plains of Europe, Africa, and Asia. The track in which they moved became a silent wilderness; for living upon the country they traversed, what they did not consume they wantonly destroyed. The loss to literature from these irruptions was great and irreparable. Science still mourns the destruction of the works of the ancient mathematicians which followed in the wake of Christian invasion. The library of Tripoli, one of the largest and most valuable collections of the time, and which contained two hundred thousand volumes, was burnt by the Crusaders. At the sack of Constantinople a hundred and twenty thousand Greek manuscripts, some of them the masterpieces of authors now only known to us by name, perished. Nor was this all. Frightful diseases, hitherto almost unknown to Europe, were conveyed and distributed through every community by the pilgrim, ignorant of the laws of hygiene, and confident in the virtues of his crucifix and scapulary. Among these, justly designated scourges of humanity, were the plague, leprosy, and syphilis. The fierce Crusaders accustomed to scenes of blood, impressed upon society that the first duty of a Christian was to inculcate the principles of his creed by force, a doctrine which subsequently conducted tens of thousands of unfortunate heretics to torture and death. Even the religious orders were not free from the general demoralization. The Templars, renowned champions of the Cross, were convicted by inquisitors of blasphemy and sacrilege, and were accused of all manner of strange and revolting vices. Such were some of the evils, the result of mistaken piety or unblushing hypocrisy, which pilgrim and palmer inflicted upon the ignorant population of Europe.—Ed.

recover by judgment, the possession of the said property of which they were deprived, even though they may not have written authority to do so as agents of the pilgrims; and, moreover, that no document shall be obtained from the king, or a judge, affecting the property of pilgrims while they are absent on a pilgrimage. Pilgrims have still another privilege which relates to the beasts of burden and property which they take with them to be used on their journey, for on these they are not obliged to pay toll, nor any other tax on account of removing them from the kingdom.

LAW IV.

Pilgrims and Romeros Can Make Bequests, and Where They Do Not Make Them as They Ought, Their Property Shall Be Placed in Safe Keeping.

Every man, who is not forbidden by law, has the right to make such disposition of his property as he desires, for nothing is of greater value to men than to have their bequests carried out. Wherefore, we will and decree, that pilgrims, whoever they may be, and wherever they may go, can always, both in health and sickness, make bequests disposing of their property, according to their wishes, and that no one shall dare to prevent them from doing so, in any way whatever; and whoever violates this law, whether he does so during the life of the pilgrim, or after his death, shall deliver to the party to whom the said pilgrim bequeathed his property, whatever he appropriated, together with the costs and damages incurred on account of the same, as approved by the judge; and shall forfeit an equal amount of his own property to the king. Where he did not appropriate anything belonging to the pilgrim, but prevented him from making the bequest, he shall pay fifty maravedis to the king; and in this matter the statements of the pilgrim, or those of his companions who traveled with him, shall be believed; and if the party has not the means wherewith to pay this sum, his body shall be at the disposal of the king. Moreover, where a pilgrim dies without bequest, the authorities of the town where he died can take possession of his property, and use as much of it as is necessary for his burial, place the balance in safe keeping, and acquaint the king with the facts, so that he may order that to be done which he thinks best.

HERE ENDS THE FIRST PARTIDA OF THIS BOOK.

